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U.S. GOVERNMENT
INFORMATION
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FEDERAL REGISTER

Vol. 81 Wednesday,

No. 212 November 2, 2016

Pages 76271–76492

OFFICE OF THE FEDERAL REGISTER

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2638

RIN 3209–AA42

Executive Branch Ethics Program Amendments

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The U.S. Office of Government Ethics is issuing a final rule amending the regulation that sets forth the elements and procedures of the executive branch ethics program. This comprehensive revision is informed by the experience gained over the last several decades administering the program, and was developed in consultation with agency ethics officials, the federal inspector general community, the Office of Personnel Management, and the Department of Justice. The final rule defines and describes the executive branch ethics program, delineates the responsibilities of various stakeholders, and enumerates key executive branch ethics procedures.

DATES: This final rule is effective January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Monica Ashar, Assistant Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917; Telephone: (202) 482–9300; TTY: (800) 877–8339; FAX: (202) 482–9237.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Office of Government Ethics (OGE) published a proposed rule in the **Federal Register**, 81 FR 36193, June 6, 2016, proposing to amend 5 CFR part 2638, The Executive Branch Ethics Program. Part 2638 sets forth the mission of the executive branch ethics program, the responsibilities of key participants, and the procedures of the executive branch ethics program, as well as the procedures for government ethics education, correction of executive branch agency ethics programs, and corrective action involving individual employees.

These amendments, which are described in the preamble to the proposed rule, draw upon the collective experience of agency ethics officials across the executive branch and OGE as the supervising ethics office. They reflect extensive input from the executive branch ethics community and the inspector general community, as well as OGE's consultation with the Department of Justice (DOJ) and the Office of Personnel Management pursuant to 5 U.S.C. app. 402(b)(1). In short, they present a comprehensive picture of the executive branch ethics program, its responsibilities and its procedures, as reflected through nearly 40 years of interpreting and implementing the Ethics in Government Act of 1978, as amended (the Act), as well as other applicable statutes, regulations, Executive orders, and authorities.

The proposed rule provided a 60-day comment period, which ended on August 5, 2016. OGE received one set of timely and responsive comments, which were submitted by an individual. OGE also received one set of timely comments from an executive branch agency, but the agency withdrew its comments prior to the deadline. After carefully considering the individual's comments and making appropriate modifications, and for the reasons set forth below and in the preamble to the proposed rule, OGE is publishing this final rule.

OGE plans to issue several pieces of guidance to the executive branch ethics community in order to provide assistance and instruction regarding the implementation of these amendments. Additionally, OGE Desk Officers are available to answer questions from their respective agencies.

II. Summary of Comments and Changes to the Proposed Rule

General Comments

As noted above, OGE received one set of comments on the proposed rule. In several instances, the commenter proposed minor, largely technical changes in wording. These proposed changes pertained to §§ 2638.107(g) and (h) (adding the words ''payment for'' before ''travel''), 2638.202 (deleting the citation to section 402 of the Act), and 2638.204 (adding the words ''filed with or'' before ''transmitted''). For various reasons, OGE has not adopted these recommendations. OGE did, however, adopt the commenter's recommendation at § 2638.207(a) to change ''the'' agency to ''an'' agency. The more substantive changes proposed by the commenter are discussed in further detail below.

Additionally, as described below, OGE is making several technical changes to provisions involving Inspectors General. OGE is making these changes based on its continuing collaboration with the federal inspector general community and with the Council of the Inspectors General on Integrity and Efficiency (CIGIE), of which the Director of OGE (Director) is a statutory member. OGE has taken into consideration the views of CIGIE, as expressed both in CIGIE meetings and in various communications with individual members of CIGIE and CIGIE's leadership. OGE believes the changes will increase the effectiveness of its ongoing coordination with CIGIE. These changes are intended to align the regulation more closely with the Act and the Inspector General Act of 1978, as amended (the Inspector General Act).

Subpart A—Mission and Responsibilities

Section 2638.101 sets forth the mission of the executive branch ethics program, which is to prevent conflicts of interest on the part of executive branch employees. The one commenter recommended revising the second sentence of § 2638.101(b), which describes the sources of potential conflicts of interest, so as to make the language clearer and to broaden the discussion of the mission to reference helping employees uphold their ethical responsibilities. Although OGE has revised this language for clarity consistent with the general aim of this comment, OGE has not adopted the specific recommendation to reference assistance to employees. Section 2638.101 is intended to articulate overarching, program-level principles, rather than focus on assisting employees individually.

OGE made several technical changes to § 2638.106, which describes the

government ethics responsibilities of Inspectors General. These changes were made to more accurately reflect their authority as set forth in section 6 of the Inspector General Act.

Subpart B—Procedures of the Executive Branch Ethics Program

Section 2638.206 establishes the requirement to provide the Director with notice of referrals made to DOJ regarding potential violations of criminal conflict of interest laws. OGE made several technical changes to this section to delete references to ''agencies'' in order to avoid potential confusion as to the appropriate channel for making required notifications. OGE sought neither to limit the independence of Inspectors General nor to exclude them from this regulatory requirement. OGE is, however, sensitive to general concerns about Inspector General independence and has eliminated the reference to ''agencies'' as a prophylactic measure to avoid creating any perception that Inspectors General would need to act in concert with various agency offices when filing the required notifications. Additionally, the one commenter suggested deleting the citation to section 402 of the Act from the undesignated paragraph of § 2638.206. As a result of the technical changes described above, the citation has been removed.

Related technical changes include deleting from § 2638.206(a) the 30-day deadline by which the Director must be notified of a referral to DOJ. This change aligns the regulation with the statutory language of 5 U.S.C. app. 402(e)(2), which requires notification ''upon referral.'' Accordingly, OGE also deleted the corresponding reference to the 30-day deadline from § 2638.604(n). Other technical changes include deleting the language at § 2638.206(b), which required the referring agency to provide the Director with certain information, because the provision was redundant of § 2638.202, ''furnishing records and information generally.'' In its place, OGE has added language committing that it will obtain the concurrence of CIGIE's Chairperson before implementing substantive changes to the OGE Form 202. With this self-imposed requirement, OGE is choosing to institutionalize its current collaboration with CIGIE as to the processes and procedures related to referrals to DOJ for prosecution. This language is not intended to require formal action other than agreement between OGE's Director and CIGIE's Chairperson. Further, concurrence would not be required when merely updating references to telephone numbers, email addresses, or similarly non-substantive information contained in the form. Finally, OGE deleted the language in § 2638.206(c) that recommended that an Inspector General, when making a covered referral to DOJ, provide the DAEO with copies of documents that are also provided to the Director. Because this provision offered only a recommendation, and would not have established a binding requirement, OGE found this language superfluous. The deletion of this language would not prevent an Inspector General from providing a DAEO with copies of documents, unless such disclosure were prohibited by law, and there may in fact be instances when OGE would encourage such sharing of documents in order to ensure that appropriate corrective action is taken.

Section 2638.209 sets forth the procedures for OGE's formal advisory opinion service, including the criteria that the Director will consider when determining whether to issue a formal advisory opinion. The sole commenter suggested replacing the fifth criterion, ''the interests of the executive branch ethics program'' at § 2638.209(b)(5), with ''the importance of the question to upholding the ethics responsibilities of employees, as listed in § 2638.102.'' OGE has not adopted this recommendation. The fifth criterion could already reasonably encompass the standard the commenter proposed. As currently drafted, the fifth criterion has the advantage of supplementing the first four criteria, which are unchanged from the prior regulation.

Subpart C—Government Ethics Education

Section 2638.302 contains the definitions for the two training formats prescribed in subpart C. Regarding the definition of ''live training'' at § 2638.302(a), which requires that ''the presenter personally communicate[] a substantial portion of the material at the same time as the employees being trained are receiving [it],'' the sole commenter requested additional guidance on the minimum for satisfying the ''substantial portion'' criteria. He cites example 5, in which OGE demonstrates that the ''substantial portion'' standard can be been met with at least a 20-minute discussion following a 40-minute video. Although the 40-minute video or other non-live material alone would not satisfy this criterion, coupling the non-live material with at least a 20-minute phone call would bring the training into compliance with the minimum standard. Further, the phone call and the video presentation are not required to occur on the same day. Although OGE did not adopt the commenter's recommendation, OGE emphasizes that the default, as illustrated in examples 1 through 4, will be for the presenter to personally communicate the material for the full duration or nearly the full duration of the training, except when to do so is impracticable.

Section 2638.304 sets forth the requirements for administering initial ethics training to new agency employees. The sole commenter observed that the deadlines for completion at § 2638.304(b) and (b)(1) are expressed in months, while the deadline at § 2638.304(a)(2)(iii) is expressed in days. He suggested that the deadlines in this section should be expressed consistently. In response, OGE is making the deadlines consistent by changing the deadline at § 2638.304(a)(2)(iii) from 90 days to 3 months. OGE selected 3 months rather than 90 days because a 3-month deadline would allow agencies to offer initial ethics training four times a year, whereas four 90-day periods would fall slightly short of a full year. The commenter also addressed the 60-day period pertaining to special Government employees at § 2638.304(b)(2), mistakenly characterizing it as a deadline. The 60-day period tracks provisions in the Act, 5 U.S.C. app. 101(d), and in criminal conflict of interest statutes, 18 U.S.C. 203 and 205, that modify certain requirements for employees who serve no more than 60 days in a year. OGE has not adopted the recommendation, which was based on an incorrect reading of the proposed rule. In considering this comment, however, OGE identified an error in its proposed language and made a technical correction at § 2638.304(b)(2), changing ''less than 60 days'' to ''no more than 60 days'' so as to conform to the statutory time frame. OGE also made the same technical correction at § 2638.305(b)(2)(ii).

OGE made a similar technical correction at § 2638.305(a) to remedy an inconsistency. In the proposed rule, OGE stated that this section, with some exceptions, ''applies to public filers who are Senate-confirmed Presidential nominees and appointees.'' At the same time, § 2638.305(b)(2)(ii) prescribes procedures for certain special Government employees who are ''expected to serve for less than 60 days in a calendar year.'' Because these individuals are not public filers, OGE deleted the words ''public filers who are'' in § 2638.305(a).

Subpart E—Corrective Action Involving Individual Employees

Subpart E implements the limited authority of the Director to take certain actions against individual employees. The commenter challenged the authority of Inspectors General to investigate matters within DOJ's authority and recommended deleting language in §§ 2638.501 and 2638.502 authorizing referrals to Inspectors General. OGE has not adopted this recommendation. As noted above, OGE consulted with DOJ prior to submitting the proposed rule for publication, and DOJ did not object to this provision.

Section 2638.504 contains the procedures that OGE may use when the Director has reason to believe that an executive branch employee is violating or has violated a noncriminal government ethics law or regulation. OGE made two technical changes to this section. First, in § 2638.504(a), OGE is clarifying that, consistent with 5 U.S.C. app. 402(f)(2)(A)(ii)(II), the Presidential notification procedure is triggered only in connection with investigations to be initiated by agency heads. Second, in § 2638.504(b), OGE is clarifying that OGE may close only its own involvement in the matter. This provision was not intended to suggest that any other office would necessarily close its involvement.

Subpart F—General Provisions

The sole commenter also raised a question regarding the definition of disciplinary action at § 2638.603 with respect to military officers. He asserted that the phrase ''comparable provisions may include those in the Uniform Code of Military Justice'' was ''overly vague and largely beside the point.'' In response to this comment and to avoid any confusion, OGE has deleted examples of disciplinary actions, as well as examples of provisions that may apply to employees who are not subject to title 5 of the United States Code. Because agencies interpret the authority under which they administer disciplinary actions, as well as determine specific disciplinary actions, OGE does not want this provision to be misconstrued as seeking to limit the authority of agencies.

As noted above in the discussion of § 2638.206(a), OGE has also deleted the language of § 2638.604(n) in the proposed regulation, which reiterated a deadline that has since been removed. As a result, OGE has also renumbered the subsequent paragraphs.

III. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule would not have a significant economic impact on a substantial number of small entities because it primarily affects current and former federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 5, subchapter II), this final rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking has been designated as a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this final rule has been reviewed by the Office of Management and Budget.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2638

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: October 27, 2016.

Walter M. Shaub, Jr.,

Director, Office of Government Ethics.

■ Accordingly, the Office of Government Ethics is revising 5 CFR part 2638 as set forth below:

PART 2638—EXECUTIVE BRANCH ETHICS PROGRAM

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Authority: 5 U.S.C. App. 101–505; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—Mission and Responsibilities

§ 2638.101 Mission.

(a) *Mission.* The primary mission of the executive branch ethics program is to prevent conflicts of interest on the part of executive branch employees.

(b) *Breadth.* The executive branch ethics program works to ensure that public servants make impartial decisions based on the interests of the public when carrying out the governmental responsibilities entrusted to them, serve as good stewards of public resources, and loyally adhere to the Constitution and laws of the United States. In the broadest sense of the term, ''conflicts of interest'' stem from financial interests; business or personal relationships; misuses of official position, official time, or public resources; and the receipt of gifts. The mission is focused on both conflicts of interest and the appearance of conflicts of interest.

(c) *Conflicts-based program.* The executive branch ethics program is a conflicts-based program, rather than a solely disclosure-based program. While transparency is an invaluable tool for promoting and monitoring ethical conduct, the executive branch ethics program requires more than transparency. This program seeks to ensure the integrity of governmental decision making and to promote public confidence by preventing conflicts of interest. Taken together, the systems in place to identify and address conflicts of interest establish a foundation on which to build and sustain an ethical culture in the executive branch.

§ 2638.102 Government ethics responsibilities of employees.

Consistent with the fundamental principle that public service is a public trust, every employee in the executive branch plays a critical role in the executive branch ethics program. As provided in the Standards of Conduct at part 2635 of this chapter, employees must endeavor to act at all times in the public's interest, avoid losing impartiality or appearing to lose impartiality in carrying out official duties, refrain from misusing their offices for private gain, serve as good stewards of public resources, and comply with the requirements of government ethics laws and regulations, including any applicable financial disclosure requirements. Employees must refrain from participating in particular matters in which they have financial interests and, pursuant to § 2635.402(f) of this chapter, should notify their supervisors or ethics officials when their official duties create the substantial likelihood of such conflicts of interest. Collectively, the charge of employees is to make ethical conduct the hallmark of government service.

§ 2638.103 Government ethics responsibilities of supervisors.

Every supervisor in the executive branch has a heightened personal responsibility for advancing government ethics. It is imperative that supervisors serve as models of ethical behavior for subordinates. Supervisors have a responsibility to help ensure that subordinates are aware of their ethical obligations under the Standards of Conduct and that subordinates know how to contact agency ethics officials. Supervisors are also responsible for working with agency ethics officials to help resolve conflicts of interest and enforce government ethics laws and regulations, including those requiring certain employees to file financial disclosure reports. In addition, supervisors are responsible, when requested, for assisting agency ethics officials in evaluating potential conflicts of interest and identifying positions subject to financial disclosure requirements.

§ 2638.104 Government ethics responsibilities of agency ethics officials.

(a) *Appointment of a Designated Agency Ethics Official.* Each agency head must appoint a Designated Agency Ethics Official (DAEO). The DAEO is the employee with primary responsibility for directing the daily activities of the agency's ethics program and coordinating with the Office of Government Ethics.

(b) *Qualifications necessary to serve as DAEO.* The following are necessary qualifications of an agency's DAEO:

(1) The DAEO must be an employee at an appropriate level in the organization, such that the DAEO is able to coordinate effectively with officials in relevant agency components and gain access to the agency head when necessary to discuss important matters related to the agency's ethics program.

(2) The DAEO must be an employee who has demonstrated the knowledge, skills, and abilities necessary to manage a significant agency program, to understand and apply complex legal requirements, and to generate support for building and sustaining an ethical culture in the organization.

(3) On an ongoing basis, the DAEO must demonstrate the capacity to serve as an effective advocate for the executive branch ethics program, show support for the mission of the executive branch ethics program, prove responsive to the Director's requests for documents and information related to the ethics program, and serve as an effective liaison with the Office of Government Ethics.

(4) In any agency with 1,000 or more employees, any DAEO appointed after the effective date of this regulation must be an employee at the senior executive level or higher, unless the agency has fewer than 10 positions at that level.

(c) *Responsibilities of the DAEO.* Acting directly or through other officials, the DAEO is responsible for taking actions authorized or required under this subchapter, including the following:

(1) Serving as an effective liaison to the Office of Government Ethics;

(2) Maintaining records of agency ethics program activities;

(3) Promptly and timely furnishing the Office of Government Ethics with all documents and information requested or required under subpart B of this part;

(4) Providing advice and counseling to prospective and current employees regarding government ethics laws and regulations, and providing former employees with advice and counseling regarding post-employment restrictions applicable to them;

(5) Carrying out an effective government ethics education program under subpart C of this part;

(6) Taking appropriate action to resolve conflicts of interest and the appearance of conflicts of interest, through recusals, directed divestitures, waivers, authorizations, reassignments, and other appropriate means;

(7) Consistent with § 2640.303 of this chapter, consulting with the Office of Government Ethics regarding the issuance of waivers pursuant to 18 U.S.C. 208(b);

(8) Carrying out an effective financial disclosure program, by:

(i) Establishing such written procedures as are appropriate relative to

the size and complexity of the agency's financial disclosure program for the filing, review, and, when applicable, public availability of financial disclosure reports;

(ii) Requiring public and confidential filers to comply with deadlines and requirements for financial disclosure reports under part 2634 of this chapter and, in the event of noncompliance, taking appropriate action to address such noncompliance;

(iii) Imposing late fees in appropriate cases involving untimely filing of public financial disclosure reports;

(iv) Making referrals to the Inspector General or the Department of Justice in appropriate cases involving knowing and willful falsification of financial disclosure reports or knowing and willful failure to file financial disclosure reports;

(v) Reviewing financial disclosure reports, with an emphasis on preventing conflicts of interest;

(vi) Consulting, when necessary, with financial disclosure filers and their supervisors to evaluate potential conflicts of interest;

(vii) Timely certifying financial disclosure reports and taking appropriate action with regard to financial disclosure reports that cannot be certified; and

(viii) Using the information disclosed in financial disclosure reports to prevent and resolve potential conflicts of interest.

(9) Assisting the agency in its enforcement of ethics laws and regulations when agency officials:

(i) Make appropriate referrals to the Inspector General or the Department of Justice;

(ii) Take disciplinary or corrective action; and

(iii) Employ other means available to them.

(10) Upon request of the Office of Inspector General, providing that office with ready and active assistance with regard to the interpretation and application of government ethics laws and regulations, as well as the procedural requirements of the ethics program;

(11) Ensuring that the agency has a process for notifying the Office of Government Ethics upon referral, made pursuant to 28 U.S.C. 535, to the Department of Justice regarding a potential violation of a conflict of interest law, unless such notification would be prohibited by law;

(12) Providing agency officials with advice on the applicability of government ethics laws and regulations to special Government employees;

(13) Requiring timely compliance with ethics agreements, pursuant to part 2634, subpart H of this chapter;

(14) Conducting ethics briefings for certain agency leaders, pursuant to § 2638.305;

(15) Prior to any Presidential election, preparing the agency's ethics program for a potential Presidential transition; and

(16) Periodically evaluating the agency's ethics program and making recommendations to the agency regarding the resources available to the ethics program.

(d) *Appointment of an Alternate Designated Agency Ethics Official.* Each agency head must appoint an Alternate Designated Agency Ethics Official (ADAEO). The ADAEO serves as the primary deputy to the DAEO in the administration of the agency's ethics program. Together, the DAEO and the ADAEO direct the daily activities of an agency's ethics program and coordinate with the Office of Government Ethics. The ADAEO must be an employee who has demonstrated the skills necessary to assist the DAEO in the administration of the agency's ethics program.

(e) *Program support by additional ethics officials and other individuals.* Subject to approval by the DAEO or the agency head, an agency may designate additional ethics officials and other employees to assist the DAEO in carrying out the responsibilities of the ethics program, some of whom may be designated ''deputy ethics officials'' for purposes of parts 2635 and 2636 of this chapter. The agency is responsible for ensuring that these employees have the skills and expertise needed to perform their assigned duties related to the ethics program and must provide appropriate training to them for this purpose. Although the agency may appoint such officials as are necessary to assist in carrying out functions of the agency's ethics program, they will be subject to the direction of the DAEO with respect to the functions of the agency's ethics program described in this chapter. The DAEO retains authority to make final decisions regarding the agency's ethics program and its functions, subject only to the authority of the agency head and the Office of Government Ethics.

(f) *Ethics responsibilities that may be performed only by the DAEO or ADAEO.* In addition to any items reserved for action by the DAEO or ADAEO in other parts of this chapter, only the DAEO or ADAEO may carry out the following responsibilities:

(1) Request approval of supplemental agency regulations, pursuant to § 2635.105 of this chapter;

(2) Recommend a separate component designation, pursuant to § 2641.302(e) of this chapter;

(3) Request approval of an alternative means for collecting certain public financial disclosure reports, pursuant to § 2638.204(c);

(4) Request determinations regarding public reporting requirements, pursuant to §§ 2634.202(c), 2634.203, 2634.205, and 2634.304(f) of this chapter;

(5) Make determinations, other than exceptions in individual cases, regarding the means the agency will use to collect public or confidential financial disclosure reports, pursuant to §§ 2638.204 and 2638.205;

(6) Request an alternative procedure for filing confidential financial disclosure reports, pursuant to § 2634.905(a) of this chapter;

(7) Request a formal advisory opinion on behalf of the agency or a prospective, current, or former employee of that agency, pursuant to § 2638.209(d); and

(8) Request a certificate of divestiture, pursuant to § 2634.1005(b) of this chapter.

§ 2638.105 Government ethics responsibilities of lead human resources officials.

(a) The lead human resources official, as defined in § 2638.603, acting directly or through delegees, is responsible for:

(1) Promptly notifying the DAEO of all appointments to positions that require incumbents to file public or confidential financial disclosure reports, with the notification occurring prior to appointment whenever practicable but in no case occurring more than 15 days after appointment; and

(2) Promptly notifying the DAEO of terminations of employees in positions that require incumbents to file public financial disclosure reports, with the notification occurring prior to termination whenever practicable but in no case occurring more than 15 days after termination.

(b) The lead human resources official may be assigned certain additional ethics responsibilities by the agency.

(1) If an agency elects to assign such responsibilities to human resources officials, the lead human resources official is responsible for coordinating, to the extent necessary and practicable, with the DAEO to support the agency's ethics program;

(2) If the lead human resources official is responsible for conducting ethics training pursuant to subpart C of this part, that official must follow the DAEO's directions regarding applicable requirements, procedures, and the qualifications of any presenters, consistent with the requirements of this chapter;

(3) If the lead human resources official is responsible for issuing the required government ethics notices in written offers of employment, pursuant to § 2638.303, or providing supervisory ethics notices, pursuant to § 2638.306, that official must comply with any substantive and procedural requirements established by the DAEO, consistent with the requirements of this chapter; and

(4) To the extent applicable, the lead human resources official is required to provide the DAEO with a written summary and confirmation regarding procedures for implementing certain requirements of subpart C of this part by January 15 each year, pursuant to § 2638.310.

(c) Nothing in this section prevents an agency head from delegating the duties described in paragraph (b) of this section to another agency official. In the event that an agency head delegates the duties described in paragraph (b) of this section to an agency official other than the lead human resources official, the requirements of paragraph (b) of this section will apply to that official.

§ 2638.106 Government ethics responsibilities of Inspectors General.

An agency's Inspector General has authority to conduct investigations of suspected violations of conflict of interest laws and other government ethics laws and regulations. An Inspector General is responsible for giving due consideration to a request made pursuant to section 403 of the Ethics in Government Act of 1978 (the ''Act'') by the Office of Government Ethics for investigation of a possible violation of a government ethics law or regulation. Inspectors General provide the Office of Government Ethics notification of certain referrals to the Department of Justice, pursuant to § 2638.206. Inspectors General may consult with the Director for legal guidance on the application of government ethics laws and regulations, except that the Director may not make any finding as to whether a provision of title 18, United States Code, or any criminal law of the United States outside of such title, has been or is being violated. Nothing in this section will be construed to limit or otherwise affect the authority of an Inspector General under section 6 of the Inspector General Act of 1978, as amended, including the authority under section 6(a)(2) to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable.

§ 2638.107 Government ethics responsibilities of agency heads.

The agency head is responsible for, and will exercise personal leadership in, establishing and maintaining an effective agency ethics program and fostering an ethical culture in the agency. The agency head is also responsible for:

(a) Designating employees to serve as the DAEO and ADAEO and notifying the Director in writing within 30 days of such designation;

(b) Providing the DAEO with sufficient resources, including staffing, to sustain an effective ethics program;

(c) Requiring agency officials to provide the DAEO with the information, support, and cooperation necessary for the accomplishment of the DAEO's responsibilities;

(d) When action is warranted, enforcing government ethics laws and regulations through appropriate referrals to the Inspector General or the Department of Justice, investigations, and disciplinary or corrective action;

(e) Requiring that violations of government ethics laws and regulations, or interference with the functioning of the agency ethics program, be appropriately considered in evaluating the performance of senior executives;

(f) Requiring the Chief Information Officer and other appropriate agency officials to support the DAEO in using technology, to the extent practicable, to carry out ethics program functions such as delivering interactive training and tracking ethics program activities;

(g) Requiring appropriate agency officials to submit to the Office of Government Ethics, by May 31 each year, required reports of travel accepted by the agency under 31 U.S.C. 1353 during the period from October 1 through March 31;

(h) Requiring appropriate agency officials to submit to the Office of Government Ethics, by November 30 each year, required reports of travel accepted by the agency under 31 U.S.C. 1353 during the period from April 1 through September 30; and

(i) Prior to any Presidential election, supporting the agency's ethics program in preparing for a Presidential transition.

§ 2638.108 Government ethics responsibilities of the Office of Government Ethics.

The Office of Government Ethics is the supervising ethics office for the executive branch, providing overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest. The Office of Government Ethics has the authorities and functions established in the Act.

(a) *Authorities and functions.* Among other authorities and functions, the Office of Government Ethics has the authorities and functions described in this section.

(1) The Office of Government Ethics issues regulations regarding conflicts of interest, standards of conduct, financial disclosure, requirements for agency ethics programs, and executive branch-wide systems of records for government ethics records. In issuing any such regulations, the Office of Government Ethics will, to the full extent required under the Act and any Executive order, coordinate with the Department of Justice and the Office of Personnel Management. When practicable, the Office of Government Ethics will also consult with a diverse group of selected agency ethics officials that represents a cross section of executive branch agencies to ascertain representative views of the DAEO community when developing substantive revisions to this chapter.

(2) The Office of Government Ethics reviews and approves or disapproves agency supplemental ethics regulations.

(3) The Office of Government Ethics issues formal advisory opinions to interested parties, pursuant to § 2638.209. When developing a formal advisory opinion, the Office of Government Ethics will provide interested parties with an opportunity to comment.

(4) The Office of Government Ethics issues guidance and informal advisory opinions, pursuant to § 2638.208. When practicable, the Office of Government Ethics will consult with selected agency ethics officials to ascertain representative views of the DAEO community when developing guidance or informal advisory opinions that the Director determines to be of significant interest to a broad segment of the DAEO community.

(5) The Office of Government Ethics supports agency ethics officials through such training, advice, and counseling as the Director deems necessary.

(6) The Office of Government Ethics provides assistance in interpreting government ethics laws and regulations to executive branch Offices of Inspector General and other executive branch entities.

(7) When practicable, the Office of Government Ethics convenes quarterly executive branch-wide meetings of key agency ethics officials. When the Office of Government Ethics convenes a major executive branch-wide training event, the event normally serves in place of a quarterly meeting.

(8) Pursuant to sections 402(b)(10) and 403 of the Act, the Director requires agencies to furnish the Office of Government Ethics with all information, reports, and records which the Director determines to be necessary for the performance of the Director's duties, except when such a release is prohibited by law.

(9) The Office of Government Ethics conducts reviews of agency ethics programs in order to ensure their compliance with program requirements and to ensure their effectiveness in advancing the mission of the executive branch-wide ethics program. The Office of Government Ethics also conducts single-issue reviews of individual agencies, groups of agencies, or the executive branch ethics program as a whole.

(10) The Office of Government Ethics reviews financial disclosure reports filed by employees, former employees, nominees, candidates for the Office of the President of the United States, and candidates for the Office of the Vice President of the United States who are required to file executive branch financial disclosure reports with the Office of Government Ethics pursuant to sections 101, 103(c), and 103(l) of the Act.

(11) By January 15 each year, the Office of Government Ethics issues year-end reports to agencies regarding their compliance with the obligations, pursuant to section 103(c) of the Act and part 2634 of this chapter:

(i) To timely transmit the annual public financial disclosure reports of certain high-level officials to the Office of Government Ethics; and

(ii) To promptly submit such additional information as is necessary to obtain the Director's certification of the reports.

(12) The Office of Government Ethics oversees the development of ethics agreements between agencies and Presidential nominees for positions in the executive branch requiring Senate confirmation and tracks compliance with such agreements. The Office of Government Ethics also maintains a guide that provides sample language for ethics agreements of Presidential nominees requiring Senate confirmation.

(13) The Office of Government Ethics proactively assists Presidential Transition Teams in support of effective and efficient Presidential transitions and, to the extent practicable, may provide Presidential campaigns with advice and counsel on preparing for Presidential transitions.

(14) The Office of Government Ethics orders such corrective action on the part of an agency as the Director deems necessary, pursuant to subpart D of this part, and such corrective action on the part of individual executive branch employees as the Director deems necessary, pursuant to subpart E of this part.

(15) The Office of Government Ethics makes determinations regarding public financial disclosure requirements, pursuant to §§ 2634.202(c), 2634.203, 2634.205, and 2634.304(f) of this chapter.

(16) The Office of Government Ethics conducts outreach to inform the public of matters related to the executive branch ethics program.

(17) The Director and the Office of Government Ethics take such other actions as are necessary and appropriate to carry out their responsibilities under the Act.

(b) *Other authorities and functions.* Nothing in this subpart or this chapter limits the authority of the Director or the Office of Government Ethics under the Act.

Subpart B—Procedures of the Executive Branch Ethics Program

§ 2638.201 In general.

This subpart establishes certain procedures of the executive branch ethics program. The procedures set forth in this subpart are in addition to procedures established elsewhere in this chapter and in the program advisories and other issuances of the Office of Government Ethics.

§ 2638.202 Furnishing records and information generally.

Consistent with sections 402 and 403 of the Act, each agency must furnish to the Director all information and records in its possession which the Director deems necessary to the performance of the Director's duties, except to the extent prohibited by law. All such information and records must be provided to the Office of Government Ethics in a complete and timely manner.

§ 2638.203 Collection of public financial disclosure reports required to be submitted to the Office of Government Ethics.

The public financial disclosure reports of individuals, other than candidates for elected office and elected officials, whose reports are required by section 103 of the Act to be transmitted to the Office of Government Ethics will be transmitted through the executive branch-wide electronic filing system of the Office of Government Ethics, except in cases in which the Director determines that using that system would be impracticable.

§ 2638.204 Collection of other public financial disclosure reports.

This section establishes the procedure that the executive branch ethics program will use to collect, pursuant to section 101 of the Act, public financial disclosure reports of individuals whose reports are not required by section 103 of the Act to be transmitted to the Office of Government Ethics.

(a) *General.* Subject to the exclusions and exceptions in paragraphs (b) through (d) of this section, the public financial disclosure reports required by part 2634 of this chapter will be collected through the executive branch-wide electronic filing system of the Office of Government Ethics.

(b) *Exclusions.* This section does not apply to persons whose financial disclosure reports are covered by section 105(a)(1) or (2) of the Act, persons whose reports are required by section 103 of the Act to be transmitted to the Office of Government Ethics, or such other persons as the Director may exclude from the coverage of this section in the interest of the executive branch ethics program.

(c) *Authorization to collect public reports in paper format or through a legacy electronic filing system.* Upon written request signed by the DAEO or ADAEO and by the Chief Information Officer, the Director of the Office of Government Ethics may authorize an agency in the interest of the executive branch ethics program to collect public financial disclosure reports in paper format or through a legacy electronic filing system other than the executive branch-wide electronic filing system of the Office of Government Ethics. The Director may rescind any such authorization based on a written determination that the rescission promotes the efficiency or effectiveness of the executive branch ethics program, but only after providing the agency with advance written notice and an opportunity to respond. The rescission will become effective on January 1 of a subsequent calendar year, but not less than 24 months after notice is provided.

(d) *Exceptions in cases of extraordinary circumstances or temporary technical difficulties.* Based on a determination that extraordinary circumstances or temporary technical difficulties make the use of an electronic filing system impractical, the DAEO or ADAEO may authorize an individual to file a public financial disclosure report using such alternate means of filing as are authorized in the program advisories of the Office of Government Ethics. To the extent practicable, agencies should limit the number of exceptions they grant under this paragraph each year.

The Director may suspend an agency's authority to grant exceptions under this paragraph when the Director is concerned that the agency may be granting exceptions unnecessarily or in a manner that is inconsistent with § 2638.601(c). Nothing in this paragraph limits the authority of the agency to excuse an employee from filing electronically to the extent necessary to provide reasonable accommodations under the Rehabilitation Act of 1973 (Pub. L. 93–112), as amended, or other applicable legal authority.

§ 2638.205 Collection of confidential financial disclosure reports.

This section establishes the procedure that the executive branch will use to collect confidential financial disclosure reports from employees of the executive branch. To the extent not inconsistent with part 2634 of this chapter or with the approved forms, instructions, and other guidance of the Office of Government Ethics, the DAEO of each agency will determine the means by which the agency will collect confidential financial disclosure reports, including a determination as to whether the agency will collect such reports in either paper or electronic format. Nothing in this paragraph limits the authority of the agency to provide reasonable accommodations under the Rehabilitation Act of 1973 (Pub. L. 93–112), as amended, or other applicable legal authority.

§ 2638.206 Notice to the Director of certain referrals to the Department of Justice.

This section establishes the requirement to provide the Director with notice of certain referrals.

(a) Upon any referral made pursuant to 28 U.S.C. 535 to the Department of Justice regarding a potential violation of a conflict of interest law, the referring office must notify the Director of the referral by filing a completed OGE Form 202 with the Director, unless prohibited by law.

(b) In order to ensure effective coordination of this section, the Office of Government Ethics will obtain the concurrence of the Chairperson of the Council of the Inspectors General on Integrity and Efficiency before implementing substantive changes to the OGE Form 202.

(c) If an agency's procedures authorize an official outside the Office of Inspector General to make a referral covered by this section, that official must provide the Inspector General and the DAEO with copies of documents provided to the Director pursuant this section, unless prohibited by law.

§ 2638.207 Annual report on the agency's ethics program.

(a) By February 1 of each year, an agency must file with the Office of Government Ethics, pursuant to section 402(e)(1) of the Act, a report containing such information about the agency's ethics program as is requested by the Office of Government Ethics. The report must be filed electronically and in a manner consistent with the instructions of the Office of Government Ethics.

(b) In order to facilitate the collection of required information by agencies, the Office of Government Ethics will provide agencies with advance notice regarding the contents of the report prior to the beginning of the reporting period for information that would be expected to be tracked over the course of the reporting period. Otherwise, it will provide as much notice as practicable, taking into consideration the effort required to collect the information.

§ 2638.208 Written guidance on the executive branch ethics program.

This section describes several means by which the Office of Government Ethics provides agencies, employees, and the public with guidance regarding its legal interpretations, program requirements, and educational offerings. Normally, guidance documents are published on the official Web site of the Office of Government Ethics.

(a) *Legal advisories.* The Office of Government Ethics issues legal advisories, which are memoranda regarding the interpretation of government ethics laws and regulations. They are intended primarily to provide education and notice to executive branch ethics officials; prospective, current, and former executive branch employees; and individuals who interact with the executive branch.

(b) *Program advisories.* The Office of Government Ethics issues program advisories, which are memoranda regarding the requirements or procedures applicable to the executive branch ethics program and individual agency ethics programs. They are intended primarily to instruct agencies on uniform procedures for the executive branch ethics program.

(c) *Informal advisory opinions.* Upon request or upon its own initiative, the Office of Government Ethics issues informal advisory opinions. Informal advisory opinions address subjects that in the opinion of the Director do not meet the criteria for issuance of formal advisory opinions. They are intended primarily to provide guidance to individuals and illustrate the application of government ethics laws and regulations to specific circumstances.

§ 2638.209 Formal advisory opinions.

This section establishes the formal advisory opinion service of the Office of Government Ethics.

(a) *General.* The Office of Government Ethics renders formal advisory opinions pursuant to section 402(b)(8) of the Act. A formal advisory opinion will be issued when the Director determines that the criteria and requirements established in this section are met.

(b) *Subjects of formal advisory opinions.* Formal advisory opinions may be rendered on matters of general applicability or important matters of first impression concerning the application of the Act; Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731 of October 17, 1990; 18 U.S.C. 202–209; and regulations interpreting or implementing these authorities. In determining whether to issue a formal advisory opinion, the Director will consider:

(1) The unique nature of the question and its precedential value;

(2) The potential number of employees throughout the government affected by the question;

(3) The frequency with which the question arises;

(4) The likelihood or presence of inconsistent interpretations on the same question by different agencies; and

(5) The interests of the executive branch ethics program.

(c) *Role of the formal advisory opinion service.* The formal advisory opinion service of the Office of Government Ethics is not intended to replace the government ethics advice and counseling programs maintained by executive branch agencies. Normally, formal advisory opinions will not be issued with regard to the types of questions appropriately directed to an agency's DAEO. If a DAEO receives a request that the DAEO believes might appropriately be answered by the Office of Government Ethics through a formal advisory opinion, the DAEO will consult informally with the General Counsel of the Office of Government Ethics for instructions as to whether the matter should be referred to the Office of Government Ethics or retained by the agency for handling. Except in unusual circumstances, the Office of Government Ethics will not render formal advisory opinions with respect to hypothetical situations posed in requests for formal advisory opinions. At the discretion of the Director, however, the Office of Government Ethics may render formal advisory

opinions on certain proposed activities or financial transactions.

(d) *Eligible persons.* Any person may request an opinion with respect to a situation in which that person is directly involved, and an authorized representative may request an opinion on behalf of that person. However, an employee will normally be required to seek an opinion from the agency's DAEO before requesting a formal advisory opinion from the Office of Government Ethics. In addition, a DAEO may request a formal advisory opinion on behalf of the agency or a prospective, current, or former employee of that agency.

(e) *Submitting a request for a formal advisory opinion.* The request must be submitted either by electronic mail addressed to *ContactOGE@oge.gov* or by mail, through either the United States Postal Service or a private shipment service, to the Director of the Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917. Personal deliveries will not be accepted.

(f) *Requirements for request.* The request must include:

(1) An express statement indicating that the submission is a request for a formal advisory opinion;

(2) The name, street address, and telephone number of the person requesting the opinion;

(3) The name, street address, and telephone number of any representative of that person;

(4) All material facts necessary for the Director to render a complete and correct opinion;

(5) The date of the request and the signature of either the requester or the requester's representative; and

(6) In the case of a request signed by a representative, a written designation of the representative that is dated and signed by the requester.

(g) *Optional materials.* At the election of the requester, the request may also include legal memoranda or other material relevant to the requested formal advisory opinion.

(h) *Additional information.* The Director may request such additional information or documentation as the Director deems necessary to the development of a formal advisory opinion, from either the requester or other sources. If the requester or the requester's representative fails to cooperate with such a request, the Office of Government Ethics normally will close the matter without issuing a formal advisory opinion.

(i) *Comments from interested parties.* The Office of Government Ethics will, to the extent practicable, solicit written comments on a request by posting a prominent notice on its official Web site. Any such notice will summarize relevant information in the request, provide interested parties 30 days to submit written comments, and include instructions for submitting written comments. Written comments submitted after the deadline will be considered only at the discretion of the Director.

(j) *Consultation with the Department of Justice.* Whenever the Office of the Government Ethics is considering rendering a formal advisory opinion, the Director will consult with the Office of Legal Counsel of the Department of Justice sufficiently in advance to afford that office an opportunity to review the matter. In addition, whenever a request involves an actual or apparent violation of any provision of 18 U.S.C. 202–209, the Director will consult with the Criminal Division of the Department of Justice. If the Criminal Division determines that an investigation or prosecution will be undertaken, the Director will take no further action on the request, unless the Criminal Division makes a determination not to prosecute.

(k) *Consultation with other executive branch officials.* The Director will consult with such other executive branch officials as the Director deems necessary to ensure thorough consideration of issues and information relevant to the request by the Office of Government Ethics. In the case of a request submitted by a prospective or current employee, the Director will share a copy of the request with the DAEO of the employee's agency.

(l) *Publication.* The Office of Government Ethics will publish each formal advisory opinion on its official Web site. Prior to publishing a formal advisory opinion on its Web site, the Office of Government Ethics will delete information that identifies individuals involved and that is unnecessary to a complete understanding of the opinion.

(m) *Reliance on formal advisory opinions.* (1) Any formal advisory opinion referred to in this section or any provisions or finding of a formal advisory opinion involving the application of the Act or the regulations promulgated pursuant to the Act or Executive order may be relied upon by:

(i) Any person directly involved in the specific transaction or activity with respect to which such advisory opinion has been rendered; and

(ii) Any person directly involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such formal advisory opinion was rendered.

(2) Any person who relies upon any provision or finding of any formal advisory opinion in accordance with this paragraph and who acts in good faith in accordance with the provisions and findings of such opinion will not, as a result of such act, be subject to prosecution under 18 U.S.C. 202–209 or, when the opinion is exculpatory, be subject to any disciplinary action or civil action based upon legal authority cited in that opinion.

§ 2638.210 Presidential transition planning.

Prior to any Presidential election, each agency has a responsibility to prepare its agency ethics program for a Presidential transition. Such preparations do not constitute support for a particular candidate and are not reflective of a belief regarding the likely outcome of the election; rather, they reflect an understanding that agencies are responsible for ensuring the continuity of governmental operations.

(a) *Preparing the ethics program for a transition.* The agency head or the DAEO must, not later than 12 months before any Presidential election, evaluate whether the agency's ethics program has an adequate number of trained agency ethics officials to effectively support a Presidential transition.

(b) *Support by the Office of Government Ethics.* In connection with any Presidential election, the Office of Government Ethics will:

(1) Prior to the election, offer training opportunities for agency ethics officials on counseling departing noncareer appointees on post-employment restrictions, reviewing financial disclosure reports, drafting ethics agreements for Presidential nominees, and counseling new noncareer appointees on conflict of interest laws and the Standards of Conduct; and

(2) After the election, in the event of a Presidential transition, proactively assist the Presidential Transition Team in preparing for Presidential nominations, coordinate with agency ethics officials, and develop plans to implement new initiatives related to government ethics.

Subpart C—Government Ethics Education

§ 2638.301 In general.

Every agency must carry out a government ethics education program to teach employees how to identify government ethics issues and obtain assistance in complying with government ethics laws and regulations. An agency's failure to comply with any

of the education or notice requirements set forth in this subpart does not exempt an employee from applicable government ethics requirements.

§ 2638.302 Definitions.

The following definitions apply to the format of the various types of training required in this subpart. The agency may deviate from these prescribed formats to the extent necessary to provide reasonable accommodations to participants under the Rehabilitation Act of 1973 (Pub. L. 93–112), as amended, or other applicable legal authority.

(a) *Live.* A training presentation is considered live if the presenter personally communicates a substantial portion of the material at the same time as the employees being trained are receiving the material, even if part of the training is prerecorded or automated. The training may be delivered in person or through video or audio technology. The presenter must respond to questions posed during the training and provide instructions for participants to submit questions after the training.

Example 1. An agency ethics official provides a presentation regarding government ethics and takes questions from participants who are assembled in a training room with the ethics official. At the end of the session, the ethics official provides contact information for participants who wish to pose additional questions. This training is considered live.

Example 2. An agency ethics official provides a presentation to a group of employees in an auditorium. She presents an introduction and a brief overview of the material that will be covered in the training. She has participants watch a prerecorded video regarding government ethics. She stops the video frequently to elaborate on key concepts and offer participants opportunities to pose questions before resuming the video. At the end of the session, she recaps key concepts and answers additional questions. She then provides contact information for employees who wish to pose additional questions. This training is considered live.

Example 3. The ethics official in Example 2 arranges for several Senate-confirmed public filers stationed outside of headquarters to participate in the live training via streaming video or telephone. For these remote participants, the ethics official also establishes a means for them to pose questions during the training, such as by emailing questions to her assistant. She also provides these remote participants with instructions for contacting the ethics office to pose additional questions after the training. This training is also considered live for the remote participants.

Example 4. Agency ethics officials present training via a telephone conference. A few dozen agency employees dial into the conference call. The ethics officials take questions that are submitted by email and provide contact information for employees who wish to pose additional questions later. This training is considered live.

Example 5. Several Senate-confirmed public filers required to complete live training in a particular year are stationed at various facilities throughout the country. For these filers, an ethics official schedules a 20-minute conference call, emails them copies of the written materials and a link to a 40-minute video on government ethics, and instructs them to view the video before the conference call. During the conference call, the ethics official recaps key concepts, takes questions, and provides his contact information in case participants have additional questions. The public filers then confirm by email that they watched the video and participated in the conference call. This training is considered live because a substantial portion of the training was live.

(b) *Interactive.* A training presentation is considered interactive if the employee being trained is required to take an action with regard to the subject of the training. The required action must involve the employee's use of knowledge gained through the training and may not be limited to merely advancing from one section of the training to another section. Training that satisfies the requirements of paragraph (a) of this section will also satisfy the requirements of this paragraph.

Example 1. An automated system allows employees to view a prerecorded video in which an agency ethics official provides training. At various points, the system poses questions and an employee selects from among a variety of possible answers. The system provides immediate feedback as to whether the selections are correct or incorrect. When the employee's selections are incorrect, the system displays the correct answer and explains the relevant concepts. This training is considered interactive.

Example 2. If, instead of a video, the training described in Example 1 were to include animated or written materials interspersed with questions and answers, the training would still be considered interactive.

Example 3. A DAEO emails materials to employees who are permitted under part 2638 to complete interactive training. The materials include a written training presentation, questions, and space for employees to provide written responses. Employees are instructed to submit their answers to agency ethics officials, who provide individualized feedback. This training is considered interactive.

Example 4. A DAEO emails materials to employees who are permitted under part 2638 to complete interactive training. The materials include a written training presentation, questions, and an answer key. The DAEO also distributes instructions for contacting an ethics official with any questions about the subjects covered. This training meets the minimum requirements to be considered interactive, even though the employees are not required to submit their answers for review and feedback. However, any DAEO who uses this minimally interactive format is encouraged to provide employees with other opportunities for more direct and personalized feedback.

§ 2638.303 Notice to prospective employees.

Written offers of employment for positions covered by the Standards of Conduct must include the information required in this section to provide prospective employees with notice of the ethical obligations associated with the positions.

(a) Content. The written offer must include, in either the body of the offer or an attachment:

(1) A statement regarding the agency's commitment to government ethics;

(2) Notice that the individual will be subject to the Standards of Conduct and the criminal conflict of interest statutes as an employee;

(3) Contact information for an appropriate agency ethics office or an explanation of how to obtain additional information on applicable ethics requirements;

(4) Where applicable, notice of the time frame for completing initial ethics training; and

(5) Where applicable, a statement regarding financial disclosure requirements and an explanation that new entrant reports must be filed within 30 days of appointment.

(b) *DAEO's authority.* At the election of the DAEO, the DAEO may specify the language that the agency will use in the notice required under paragraph (a) of this section or may approve, disapprove, or revise language drafted by other agency officials.

(c) *Tracking.* Each agency must establish written procedures, which the DAEO must review each year, for issuing the notice required in this section. In the case of an agency with 1,000 or more employees, the DAEO must review any submissions under § 2638.310 each year to confirm that the agency has implemented an appropriate process for meeting the requirements of this section.

§ 2638.304 Initial ethics training.

Each new employee of the agency subject to the Standards of Conduct must complete initial ethics training that meets the requirements of this section.

(a) Coverage. (1) This section applies to each employee appointed to a position in an agency who was not an employee of the agency immediately prior to that appointment. This section also permits Presidential nominees for Senate-confirmed positions to complete the initial ethics training prior to appointment.

(2) The DAEO may exclude a non-supervisory position at or below the

GS–8 grade level, or the equivalent, from the requirement to complete the training presentation described in paragraph (e)(1) of this section, provided that:

(i) The DAEO signs a written determination that the duties of the position do not create a substantial likelihood that conflicts of interest will arise;

(ii) The position does not meet the criteria set forth at § 2634.904 of this chapter; and

(iii) The agency provides an employee described in paragraph (a)(1) of this section who is appointed to the position with the written materials required under paragraph (e)(2) of this section within 3 months of appointment.

(b) *Deadline.* Except as provided in this paragraph, each new employee must complete initial ethics training within 3 months of appointment.

(1) In the case of a Presidential nominee for a Senate-confirmed position, the nominee may complete the ethics training before or after appointment, but not later than 3 months after appointment.

(2) In the case of a special Government employee who is reasonably expected to serve for no more than 60 days in a calendar year on a board, commission, or committee, the agency may provide the initial ethics training at any time before, or at the beginning of, the employee's first meeting of the board, commission, or committee.

(c) *Duration.* The duration of the training must be sufficient for the agency to communicate the basic ethical obligations of federal service and to present the content described in paragraph (e) of this section.

(d) *Format.* Employees covered by this section are required to complete interactive initial ethics training.

(e) *Content.* The following content requirements apply to initial ethics training.

(1) *Training presentation.* The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate for the employees participating in the training. The presentation must address concepts related to the following subjects:

(i) Financial conflicts of interest;

(ii) Impartiality;

(iii) Misuse of position; and

(iv) Gifts.

(2) *Written materials.* In addition to the training presentation, the agency must provide the employee with either the following written materials or written instructions for accessing them:

(i) The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency;

(ii) Provisions of any supplemental agency regulations that the DAEO determines to be relevant or a summary of those provisions;

(iii) Such other written materials as the DAEO determines should be included; and

(iv) Instructions for contacting the agency's ethics office.

(f) *Tracking.* Each agency must establish written procedures, which the DAEO must review each year, for initial ethics training. In the case of an agency with 1,000 or more employees, the DAEO must review any submissions under § 2638.310 each year to confirm that the agency has implemented an appropriate process for meeting the requirements of this section.

Example 1. The DAEO of a large agency decides that the agency's ethics officials will conduct live initial ethics training for high-level employees and certain procurement officials. The DAEO directs ethics officials to cover concepts related to financial conflicts of interest, impartiality, misuse of position, and gifts during the live training sessions. She also coordinates with the agency's Chief Information Officer to develop computerized training for all other new employees, and she directs her staff to include concepts related to financial conflicts of interest, impartiality, misuse of position, and gifts in the computerized training. The computerized training poses multiple-choice questions and provides feedback when employees answer the questions. At the DAEO's request, the agency's human resources officials distribute the required written materials as part of the onboarding procedures for new employees. The computerized training automatically tracks completion of the training, and the ethics officials use sign-in sheets to track participation in the live training. After the end of the calendar year, the DAEO reviews the materials submitted by the Office of Human Resources under § 2638.310 to confirm that the agency has implemented procedures for identifying new employees, distributing the written materials, and providing their initial ethics training. The agency's program for initial ethics training complies with the requirements of § 2638.304.

Example 2. The agency head, the DAEO, and the lead human resources official of an agency with more than 1,000 employees have agreed that human resources officials will conduct initial ethics training. The DAEO provides the lead human resources official with written materials for use during the training, approves the content of the presentations, and trains the human resources officials who will conduct the initial ethics training. After the end of the calendar year, the lead human resources official provides the DAEO with a copy of the agency's procedures for identifying new employees and providing initial ethics training, and the lead human resources official confirms that there is a reasonable basis for concluding that the procedures have been implemented. The DAEO reviews these procedures and finds them satisfactory. The agency has complied with its tracking obligations with regard to initial ethics training.

§ 2638.305 Additional ethics briefing for certain agency leaders.

In addition to other applicable requirements, each individual covered by this section must complete an ethics briefing to discuss the individual's immediate ethics obligations. Although the ethics briefing is separate from the initial ethics training, the agency may elect to combine the ethics briefing and the initial ethics training, provided that the requirements of both this section and § 2638.304 are met.

(a) *Coverage.* This section applies to Senate-confirmed Presidential nominees and appointees, except for those in positions identified in § 2634.201(c)(2) of this chapter.

(b) *Deadline.* The following deadlines apply to the ethics briefing.

(1) Except as provided in paragraph (b)(2) of this section, each individual covered by this section must complete the ethics briefing after confirmation but not later than 15 days after appointment. The DAEO may grant an extension of the deadline not to exceed 30 days after appointment.

(2)(i) In extraordinary circumstances, the DAEO may grant an additional extension to an individual by issuing a written determination that an extension is necessary. The determination must describe the extraordinary circumstances necessitating the extension, caution the individual to be vigilant for conflicts of interest created by any newly acquired financial interests, remind the individual to comply with any applicable ethics agreement, and be accompanied by a copy of the ethics agreement(s). The DAEO must send a copy of the determination to the individual before expiration of the time period established in paragraph (b)(1) of this section. The agency must conduct the briefing at the earliest practicable date thereafter. The written determination must be retained with the record of the individual's briefing.

(ii) In the case of a special Government employee who is expected to serve for no more than 60 days in a calendar year on a board, commission, or committee, the agency must provide the ethics briefing before the first meeting of the board, commission, or committee.

(c) *Qualifications of presenter.* The employee conducting the briefing must have knowledge of government ethics laws and regulations and must be

qualified, as the DAEO deems appropriate, to answer the types of basic and advanced questions that are likely to arise regarding the required content.

(d) *Duration.* The duration of the ethics briefing must be sufficient for the agency to communicate the required content.

(e) *Format.* The ethics briefing must be conducted live.

(f) *Content.* The ethics briefing must include the following activities.

(1) If the individual acquired new financial interests reportable under section 102 of the Act after filing the nominee financial disclosure report, the agency ethics official must appropriately address the potential for conflicts of interest arising from those financial interests.

(2) The agency ethics official must counsel the individual on the basic recusal obligation under 18 U.S.C. 208(a).

(3) The agency ethics official must explain the recusal obligations and other commitments addressed in the individual's ethics agreement and ensure that the individual understands what is specifically required in order to comply with each of them, including any deadline for compliance. The ethics official and the individual must establish a process by which the recusals will be achieved, which may consist of a screening arrangement or, when the DAEO deems appropriate, vigilance on the part of the individual with regard to recusal obligations as they arise in particular matters.

(4) The agency ethics official must provide the individual with instructions and the deadline for completing initial ethics training, unless the individual completes the initial ethics training either before or during the ethics briefing.

(g) *Tracking.* The DAEO must maintain a record of the date of the ethics briefing for each current employee covered by this section.

Example 1. A group of ethics officials conducts initial ethics training for six Senate-confirmed Presidential appointees within 15 days of their appointments. At the end of the training, ethics officials meet individually with each of the appointees to conduct their ethics briefings. The agency and the appointees have complied with both § 2638.304 and § 2638.305.

Example 2. The Senate confirms a nominee for a position as an Assistant Secretary. After the nominee's confirmation but several days before her appointment, the nominee completes her initial ethics briefing during a telephone call with an agency ethics official, and the ethics official records the date of the briefing. The agency and the nominee have complied with § 2638.305. During the telephone call, the ethics official also discusses the content required for initial ethics training and provides the nominee with instructions for accessing the required written materials online. The agency and the nominee have also complied with § 2638.304.

§ 2638.306 Notice to new supervisors.

The agency must provide each employee upon initial appointment to a supervisory position with the written information required under this section.

(a) *Coverage.* This requirement applies to each civilian employee who is required to receive training pursuant to 5 CFR 412.202(b).

(b) *Deadline.* The agency must provide the written materials required by this section within 1 year of the employee's initial appointment to the supervisory position.

(c) *Written materials.* The written materials must include contact information for the agency's ethics office and the text of § 2638.103. In addition, a copy of, a hyperlink to, or the address of a Web site containing the Principles of Ethical Conduct must be included, as well as such other information as the DAEO deems necessary for new supervisors.

(d) *Tracking.* Each agency must establish written procedures, which the DAEO must review each year, for supervisory ethics notices. In the case of an agency with 1,000 or more employees, the DAEO must review any submissions under § 2638.310 each year to confirm that the agency has implemented an appropriate process for meeting the requirements of this section.

§ 2638.307 Annual ethics training for confidential filers and certain other employees.

Each calendar year, employees covered by this section must complete ethics training that meets the following requirements.

(a) *Coverage.* In any calendar year, this section applies to the following employees, unless they are public filers:

(1) Each employee who is required to file an annual confidential financial disclosure report pursuant to § 2634.904 of this chapter during that calendar year, except an employee who ceases to be a confidential filer before the end of the calendar year;

(2) Employees appointed by the President and employees of the Executive Office of the President;

(3) Contracting officers described in 41 U.S.C. 2101; and

(4) Other employees designated by the head of the agency.

(b) *Deadline.* The employee must complete required annual ethics training before the end of the calendar year.

(c) *Duration.* Agencies must provide employees with 1 hour of duty time to complete interactive training and review any written materials.

(d) *Format.* The following formatting requirements apply.

(1) Except as provided in paragraph (d)(2) of this section, employees covered by this section are required to complete interactive training.

(2) If the DAEO determines that it is impracticable to provide interactive training to a special Government employee covered by this section who is expected to work no more than 60 days in a calendar year, or to an employee who is an officer in the uniformed services serving on active duty for no more 30 consecutive days, only the requirement to provide the written materials required by this section will apply to that employee each year. The DAEO may make the determination as to individual employees or a group of employees.

(e) *Content.* The following content requirements apply to annual ethics training for employees covered by this section.

(1) *Training presentation.* The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate for the employees participating in the training. The presentation must address concepts related to the following subjects:

(i) Financial conflicts of interest;

(ii) Impartiality;

(iii) Misuse of position; and

(iv) Gifts.

(2) *Written materials.* In addition to the training presentation, the agency must provide the employee with either the following written materials or written instructions for accessing them:

(i) The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency;

(ii) Provisions of any supplemental agency regulations that the DAEO determines to be relevant or a summary of those provisions;

(iii) Such other written materials as the DAEO determines should be included; and

(iv) Instructions for contacting the agency's ethics office.

(f) *Tracking.* The following tracking requirements apply to training conducted pursuant to this section. An employee covered by this section must confirm in writing the completion of annual ethics training and must comply with any procedures established by the DAEO for such confirmation. If the DAEO or other presenter has knowledge that an employee completed required

training, that individual may record the employee's completion of the training, in lieu of requiring the employee to provide written confirmation. In the case of an automated system that delivers interactive training, the DAEO may deem the employee to have confirmed the completion of the training if the system tracks completion automatically.

§ 2638.308 Annual ethics training for public filers.

Each calendar year, public filers and other employees specified in this section must complete ethics training that meets the following requirements.

(a) *Coverage.* In any calendar year, this section applies to each employee who is required to file an annual public financial disclosure report pursuant to § 2634.201(a) of this chapter during that calendar year, except for an employee who ceases to be a public filer during that calendar year.

(b) *Deadline.* A public filer must complete required annual ethics training before the end of the calendar year.

(c) *Qualifications of presenter.* The employee conducting any live training presentation must have knowledge of government ethics laws and regulations and must be qualified, as the DAEO deems appropriate, to answer the types of basic and advanced questions that are likely to arise regarding the required content.

(d) *Duration.* The duration of training must be sufficient for the agency to communicate the required content, but at least 1 hour. Agencies must provide employees with 1 hour of duty time to complete interactive training and review any written materials.

(e) *Format.* The annual ethics training must meet the following formatting requirements.

(1) Employees whose pay is set at Level I or Level II of the Executive Schedule must complete 1 hour of live training each year, unless a matter of vital national interest makes it necessary for an employee to complete interactive training in lieu of live training in a particular year.

(2) Other civilian employees identified in section 103(c) of the Act who are stationed in the United States must complete live training once every 2 years and interactive training in alternate years. In extraordinary circumstances, the DAEO may grant written authorization for an employee who is required to complete live training in a particular year to complete interactive training.

(3) All other employees covered by this section must complete interactive training.

(f) *Content.* The following content requirements apply to annual ethics training for employees covered by this section.

(1) *Training presentation.* The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate for the employees participating in the training. The presentation must address concepts related to the following subjects:

(i) Financial conflicts of interest;

(ii) Impartiality;

(iii) Misuse of position; and

(iv) Gifts.

(2) *Written materials.* In addition to the training presentation, the agency must provide the employee with either the following written materials or written instructions for accessing them:

(i) The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency;

(ii) Provisions of any supplemental agency regulations that the DAEO determines to be relevant or a summary of those provisions;

(iii) Such other written materials as the DAEO determines should be included; and

(iv) Instructions for contacting the agency's ethics office.

(g) *Tracking.* The following tracking requirements apply to training conducted pursuant to this section. An employee covered by this section must confirm in writing the completion of annual ethics training and must comply with any procedures established by the DAEO for such confirmation. If the DAEO or other presenter has knowledge that an employee completed required training, that individual may record the employee's completion of the training, in lieu of requiring the employee to provide written confirmation. In the case of an automated system that delivers interactive training, the DAEO may deem the employee to have confirmed the completion of the training if the system tracks completion automatically.

Example 1. The DAEO of a small agency distributes the written materials for annual training by emailing a link to a Web site that contains the required materials. He then conducts a live training session for all of the agency's public filers. He spends the first 15 minutes of the training addressing concepts related to financial conflicts of interest, impartiality, misuse of position, and gifts. Because several participants are published authors, he spends the next 15 minutes covering restrictions on compensation for speaking, teaching, and writing. He then spends 20 minutes discussing hypothetical examples related to the work of the agency and 10 minutes answering questions. The training meets the content requirements of this section. Further, because live training satisfies the requirements for interactive training, this training meets the formatting requirements for all public filers, including those required to complete interactive training.

Example 2. An ethics official personally appears at each monthly senior staff meeting to conduct a 10-minute training session on government ethics. Across the year, he addresses concepts related to financial conflicts of interest, impartiality, misuse of position, gifts, and other subjects related to government ethics laws and regulations, although no one session covers all of these subjects. During each meeting, he distributes a one-page handout summarizing the key points of his presentation, takes questions, and provides contact information for employees who wish to pose additional questions. He records the names of the public filers in attendance at each meeting. Once a year, he emails them the required written materials, as well as the one-page summaries. While many of these public filers do not attend all 12 meetings, each attends at least six sessions during the calendar year. Although some of the filers missed the sessions that addressed gifts, they all received the handout summarizing the presentation on gifts. The training satisfies the annual training requirement for the public filers who attended the meetings, including those required to complete interactive training. Moreover, because the ethics official recorded the names of the public filers who attended, the filers are not required to separately confirm their completion of the training.

Example 3. One of the Presidentially appointed, Senate-confirmed employees in Example 2 was required to complete live training that year. Because she attended only four senior staff meetings during the year, she completed only 40 minutes of annual ethics training. The DAEO allows the employee to spend 20 minutes reviewing the handouts and written materials and send an email confirming that she completed her review before the end of the calendar year. This arrangement satisfies the requirements for live annual training because a substantial portion of the training was live.

§ 2638.309 Agency-specific ethics education requirements.

The DAEO may establish additional requirements for the agency's ethics education program, with or without a supplemental agency regulation under § 2635.105 of this chapter.

(a) *Groups of employees.* The DAEO may establish specific government ethics training requirements for groups of agency employees.

(b) *Employees performing ethics duties.* The DAEO has an obligation to ensure that employees performing assigned ethics duties have the necessary expertise with regard to

government ethics laws and regulations. If the DAEO determines that employees engaged in any activities described in §§ 2638.104 and 2638.105 require training, the DAEO may establish specific training requirements for them either as a group or individually.

(c) *Procedures.* The DAEO may establish specific procedures for training that the DAEO requires under paragraph (a) or (b) of this section, including any certification procedures the DAEO deems necessary. Agency employees must comply with the requirements and procedures that the DAEO establishes under this section.

§ 2638.310 Coordinating the agency's ethics education program.

In an agency with 1,000 or more employees, any office that is not under the supervision of the DAEO but has been delegated responsibility for issuing notices, pursuant to § 2638.303 or § 2638.306, or conducting training, pursuant to § 2638.304, must submit the following materials to the DAEO by January 15 each year:

(a) A written summary of procedures that office has established to ensure compliance with this subpart; and

(b) Written confirmation that there is a reasonable basis for concluding that the procedures have been implemented.

Subpart D—Correction of Executive Branch Agency Ethics Programs

§ 2638.401 In general.

The Office of Government Ethics has authority, pursuant to sections 402(b)(9) and 402(f)(1) of the Act, to take the action described in this subpart with respect to deficiencies in agency ethics programs. Agency ethics programs comprise the matters described in this subchapter for which agencies are responsible.

§ 2638.402 Informal action.

If the Director has information indicating that an agency ethics program is not compliant with the requirements set forth in applicable government ethics laws and regulations, the Director is authorized to take any or all of the measures described in this section. The Director may:

(a) Contact agency ethics officials informally to identify the relevant issues and resolve them expeditiously;

(b) Issue a notice of deficiency to make the agency aware of its possible noncompliance with an applicable government ethics law or regulation;

(c) Require the agency to respond in writing to the notice of deficiency;

(d) Require the agency to provide such additional information or documentation as the Director determines to be necessary;

(e) Issue an initial decision with findings as to the existence of a deficiency in the agency's ethics program;

(f) Require the agency to correct or, at the Director's discretion, satisfactorily mitigate any deficiency in its ethics program;

(g) Provide the agency with guidance on measures that would correct or satisfactorily mitigate any program deficiency;

(h) Monitor the agency's efforts to correct or satisfactorily mitigate the deficiency and require the agency to submit progress reports; or

(i) Take other actions authorized under the Act to resolve the matter informally.

§ 2638.403 Formal action.

If the Director determines that informal action, pursuant to § 2638.402, has not produced an acceptable resolution, the Director may issue an order directing the agency to take specific corrective action.

(a) Before issuing such an order, the Director will:

(1) Advise the agency in writing of the deficiency in its ethics program;

(2) Describe the action that the Director is considering taking;

(3) Provide the agency with 30 days to respond in writing; and

(4) Consider any timely written response submitted by the agency.

(b) If the Director is satisfied with the agency's response, no order will be issued.

(c) If the Director decides to issue an order, the order will describe the corrective action to be taken.

(d) If the agency does not comply with the order within a reasonable time, the Director will:

(1) Notify the head of the agency of intent to furnish a report of noncompliance to the President and the Congress;

(2) Provide the agency 14 calendar days within which to furnish written comments for submission with the report of noncompliance; and

(3) Report the agency's noncompliance to the President and to the Congress.

Subpart E—Corrective Action Involving Individual Employees

§ 2638.501 In general.

This subpart addresses the Director's limited authority, pursuant to sections 402(b)(9) and 402(f)(2) of the Act, to take certain actions with regard to individual employees if the Director suspects a violation of a noncriminal government ethics law or regulation. Section 402(f)(5) of the Act prohibits the Director from making any finding regarding a violation of a criminal law. Therefore, the Director will refer possible criminal violations to an Inspector General or the Department of Justice, pursuant to § 2638.502. If, however, the Director is concerned about a possible violation of a noncriminal government ethics law or regulation by an employee, the Director may notify the employee's agency, pursuant to § 2638.503. In the rare circumstance that an agency does not address a matter after receiving this notice, the Director may use the procedures in § 2638.504 to issue a nonbinding recommendation of a disciplinary action or an order to terminate an ongoing violation. Nothing in this subpart relieves an agency of its primary responsibility to ensure compliance with government ethics laws and regulations.

§ 2638.502 Violations of criminal provisions related to government ethics.

Consistent with section 402(f) of the Act, nothing in this subpart authorizes the Director or any agency official to make a finding as to whether a provision of title 18, United States Code, or any other criminal law of the United States outside of such title, has been or is being violated. If the Director has information regarding the violation of a criminal law by an individual employee, the Director will notify an Inspector General or the Department of Justice.

§ 2638.503 Recommendations and advice to employees and agencies.

The Director may make such recommendations and provide such advice to employees or agencies as the Director deems necessary to ensure compliance with applicable government ethics laws and regulations. The Director's authority under this section includes the authority to communicate with agency heads and other officials regarding government ethics and to recommend that the agency investigate a matter or consider taking disciplinary or corrective action against individual employees.

§ 2638.504 Violations of noncriminal provisions related to government ethics.

In the rare case that consultations made pursuant to § 2638.503 have not resolved the matter, the Director may use the procedures in this section if the Director has reason to believe that an employee is violating, or has violated, any noncriminal government ethics law or regulation. Any proceedings pursuant

to this section will be conducted in accordance with applicable national security requirements.

(a) *Agency investigation.* The Director may recommend that the agency head or the Inspector General conduct an investigation. If the Director determines thereafter that an agency head has not conducted an investigation within a reasonable time, the Director will notify the President.

(b) *Initiating further proceedings.* Following an investigation pursuant to paragraph (a) of this section or a determination by the Director that an investigation has not been conducted within a reasonable time, the Director may either initiate further proceedings under this section or close the involvement of the Office of Government Ethics in the matter.

(1) If the Director initiates further proceedings, the Director will notify the employee in writing of the suspected violation, the right to respond orally and in writing, and the right to be represented. The notice will include instructions for submitting a written response and requesting an opportunity to present an oral response, copies of this section and sections 401–403 of the Act, and copies of the material relied upon by the Office of Government Ethics.

(2) If the Director is considering issuing an order directing the employee to take specific action to terminate an ongoing violation, the Director will also provide notice of the potential issuance of an order and the right to request a hearing, pursuant to paragraph (f) of this section.

(c) *Employee's response.* The employee will be provided with a reasonable opportunity to present an oral response to the General Counsel of the Office of Government Ethics within 30 calendar days of the date of the employee's receipt of the notice described in paragraph (b) of this section. If the employee fails to timely request an opportunity to present an oral response or fails to cooperate with reasonable efforts to schedule the oral response, only a timely submitted written response will be considered.

(d) *General Counsel's recommendation.* After affording the employee 30 calendar days to respond, the General Counsel will provide the Director with a written recommendation as to the action warranted by the circumstances. However, if the employee has timely exercised an applicable right to request a hearing pursuant to paragraph (g) of this section, the provisions of paragraph (g) will apply instead of the provisions of this paragraph.

(1) If the employee has not had an opportunity to comment on any newly obtained material relied upon for the recommendation, the General Counsel will provide the employee with an opportunity to comment on that material before submitting the recommendation to the Director.

(2) The recommendation will include findings of fact and a conclusion as to whether it is more likely than not that a violation has occurred. The General Counsel will provide the Director with copies of the material relied upon for the recommendation, including any timely written response and a transcript of any oral response of the employee.

(3) In the case of an ongoing violation, the General Counsel may recommend an order directing the employee to take specific action to terminate the violation, provided that the employee has been afforded the notice required under paragraph (f) of this section and an opportunity for a hearing.

(e) *Decisions and orders of the Director.* After reviewing the recommendation of the General Counsel pursuant to paragraph (d) of this section or, in the event of a hearing, the recommendation of the administrative law judge pursuant to paragraph (g)(7) of this section, the Director may issue a decision and, if applicable, an order. The authority of the Director to issue decisions and orders under this paragraph may not be delegated to any other official. The Director's decision will include written findings and conclusions with respect to all material issues and will be supported by substantial evidence of record.

(1) A copy of the decision and order will be furnished to the employee and, if applicable, the employee's representative. Copies will also be provided to the DAEO and the head of the agency or, where the employee is the head of an agency, to the President. The Director's decision and any order will be posted on the official Web site of the Office of Government Ethics, except to the extent prohibited by law.

(2) The Director's decision may include a nonbinding recommendation that appropriate disciplinary or corrective action be taken against the employee. If the agency head does not take the action recommended within a reasonable period of time, the Director may notify the President.

(3) In the case of an ongoing violation, the Director may issue an order directing the employee to take specific action to terminate the violation, provided that the employee has been afforded the notice required under paragraph (f) of this section and an opportunity for a hearing.

(f) *Notice of the right to request a hearing regarding an order to terminate a violation.* Before an order to terminate an ongoing violation may be recommended or issued under this section, the employee must be provided with written notice of the potential issuance of an order, the right to request a hearing, and instructions for requesting a hearing.

(1) If the employee submits a written request for a hearing within 30 calendar days of the date of the employee's receipt of the notice, the hearing will be conducted pursuant to paragraph (g) of this section;

(2) If the employee does not submit a written request for a hearing within 30 days of receipt of the notice, the General Counsel may issue a recommendation, pursuant to paragraph (d) of this section, in lieu of a hearing after first considering any timely response of the employee, pursuant to paragraph (c) of this section; and

(3) If the employee timely submits written requests for both a hearing, pursuant to paragraph (f) of this section, and an oral response, pursuant to paragraph (c) of this section, only a hearing will be conducted, pursuant to paragraph (g) of this section.

(g) *Hearings.* If, after receiving a notice required pursuant to paragraph (f) of this section, the employee submits a timely request for a hearing, an administrative law judge who has been appointed under 5 U.S.C. 3105 will serve as the hearing officer, and the following procedures will apply to the hearing. An employee of the Office of Government Ethics will be assigned to provide the administrative law judge with logistical support in connection with the hearing.

(1) The General Counsel of the Office of Government Ethics will designate attorneys to present evidence and argument at the hearing in support of a possible finding that the employee is engaging in an ongoing violation. The General Counsel will serve as Advisor to the Director and will not, in connection with the presentation of evidence and argument against the employee, direct or supervise these attorneys. Any attorney who presents evidence, argument, or testimony against the employee at the hearing will be recused from assisting the Director or the General Counsel in connection with the contemplated order.

(2) The administrative law judge will issue written instructions for the conduct of the hearing, including deadlines for submitting lists of proposed witnesses and exchanging copies of documentary evidence. The hearing will be conducted informally,

and the administrative law judge may make such rulings as are necessary to ensure that the hearing is conducted equitably and expeditiously.

(3) The parties to the hearing will be the employee and the attorneys of the Office of Government Ethics designated to present evidence and arguments supporting a finding that a violation is ongoing, respectively. The parties will not engage in *ex parte* communications with the administrative law judge, unless the administrative law judge authorizes limited *ex parte* communications regarding scheduling and logistical matters.

(4) If either party requests assistance in securing the appearance of an approved witness who is an employee, the administrative law judge may, at his or her discretion, notify the General Counsel, who will assist the Director in requesting that the head of the employing agency produce the witness, pursuant to section 403(a)(1) of the Act. The Director will notify the President if an agency head fails to produce the approved witness.

(5) The hearing will be conducted on the record and witnesses will be placed under oath and subject to cross-examination. Following the hearing, the administrative law judge will provide each party with a copy of the hearing transcript.

(6) Hearings will generally be open to the public, but the administrative law judge may issue a written order closing, in whole or in part, the hearing in the best interests of national security, the employee, a witness, or an affected person. The order will set forth the reasons for closing the hearing and, along with any objection to the order by a party, will be made a part of the record. Unless specifically excluded by the administrative law judge, the DAEO of the employee's agency will be permitted to attend a closed hearing. If the administrative law judge denies a request by a party or an affected person to close the hearing, in whole or in part, that denial will be immediately appealable by the requester. The requester must file a notice of appeal with the Director within 3 working days. In the event that such a notice is filed, the hearing will be held in abeyance pending resolution of the appeal. The notice of appeal, exclusive of attachments, may not exceed 10 pages of double-spaced type. The Director will afford the parties and, if not a party, the requester the opportunity to make an oral presentation in person or via telecommunications technology within 3 working days of the filing of the appeal. The oral presentation will be conducted on the record. If the appellant or either party is unavailable to participate in the oral presentation within the 3-working-day period, the Director will convene the oral presentation without that party or affected person. The Director will issue a decision on the appeal within 3 working days of the oral presentation. If the Director is unavailable during this time period, the Director may designate a senior executive of the Office of Government Ethics to hear the oral presentation and decide the appeal. The notice of appeal, the record of the oral presentation, the decision on the appeal, and any other document considered by the Director or the Director's designee in connection with the appeal will be made a part of the record of the hearing.

(7) After closing the record, the administrative law judge will certify the entire record to the Director for decision. When so certifying the record, the administrative law judge will make a recommended decision, which will include his or her written findings of fact and conclusions of law with respect to material issues. After considering the certified record, the Director may issue a decision and an order, pursuant to paragraph (e) of this section.

(h) *Dismissal.* The Director may dismiss a proceeding under this section at any time, without a finding as to the alleged violation, upon a finding that:

(1) The employee or the agency has taken appropriate action to address the Director's concerns;

(2) The employee has undertaken, or agreed in writing to undertake, measures the Director deems satisfactory; or

(3) A question has arisen involving the potential application of a criminal law.

(i) *Notice procedure.* The notices required by paragraphs (b)(1) and (f) of this section may be delivered by U.S. mail, electronic mail, or personal delivery. There will be a rebuttable presumption that notice sent by U.S. mail is received within 5 working days. If the agency does not promptly provide the Office of Government Ethics with an employee's contact information upon request, the notice may be sent to the agency's DAEO, who will bear responsibility for promptly delivering that notice to the employee and promptly notifying the Director after its delivery.

Subpart F—General Provisions

§ 2638.601 Authority and purpose.

(a) *Authority.* The regulations of this part are issued pursuant to the authority of titles I and IV of the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended) (''the Act'').

(b) *Purpose.* These executive branch regulations supplement and implement titles I, IV and V of the Act and set forth more specifically certain procedures provided in those titles, and furnish examples, where appropriate.

(c) *Agency authority.* Subject only to the authority of the Office of Government Ethics as the supervising ethics office for the executive branch, all authority conferred on agencies in this subchapter B of chapter XVI of title 5 of the Code of Federal Regulations is sole and exclusive authority.

§ 2638.602 Agency regulations.

Each agency may, subject to the prior approval of the Office of Government Ethics, issue regulations not inconsistent with this part and this subchapter, using the procedures set forth in § 2635.105 of this chapter.

§ 2638.603 Definitions.

For the purposes of this part:

Act means the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended).

ADAEO or *Alternate Designated Agency Ethics Official* means an officer or employee who is designated by the head of the agency as the primary deputy to the DAEO in coordinating and managing the agency's ethics program in accordance with the provisions of § 2638.104.

Agency or *agencies* means any executive department, military department, Government corporation, independent establishment, board, commission, or agency, including the United States Postal Service and Postal Regulatory Commission, of the executive branch.

Agency head means the head of an agency. In the case of a department, it means the Secretary of the department. In the case of a board or commission, it means the Chair of the board or commission.

Confidential filer means an employee who is required to file a confidential financial disclosure report pursuant to § 2634.904 of this chapter.

Conflict of interest laws means 18 U.S.C. 202–209, and *conflict of interest law* means any provision of 18 U.S.C. 202–209.

Corrective action means any action necessary to remedy a past violation or prevent a continuing violation of this part, including but not limited to restitution, change of assignment, disqualification, divestiture, termination of an activity, waiver, the creation of a qualified diversified or blind trust, or counseling.

DAEO or *Designated Agency Ethics Official* means an officer or employee who is designated by the head of the agency to coordinate and manage the agency's ethics program in accordance with the provisions of § 2638.104.

Department means a department of the executive branch.

Director means the Director of the Office of Government Ethics.

Disciplinary action means those disciplinary actions referred to in Office of Personnel Management regulations and instructions implementing provisions of title 5 of the United States Code or provided for in comparable provisions applicable to employees not subject to title 5.

Employee means any officer or employee of an agency, including a special Government employee. It includes officers but not enlisted members of the uniformed services. It includes employees of a state or local government or other organization who are serving on detail to an agency, pursuant to 5 U.S.C. 3371, *et seq.* It does not include the President or Vice President. Status as an employee is unaffected by pay or leave status or, in the case of a special Government employee, by the fact that the individual does not perform official duties on a given day.

Executive branch includes each executive agency as defined in 5 U.S.C. 105 and any other entity or administrative unit in the executive branch. However, it does not include any agency, entity, office, or commission that is defined by or referred to in 5 U.S.C. app. sections 109(8)–(11) of the Act as within the judicial or legislative branch.

Government ethics laws and regulations include, among other applicable authorities, the provisions related to government ethics or financial disclosure of the following authorities:

(1) Chapter 11 of title 18 of the United States Code;

(2) The Ethics in Government Act of 1978 (Pub. L. 95–521, as amended);

(3) The Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) (Pub. L. 112–105, as amended);

(4) Executive Order 12674 (Apr. 12, 1989) as amended by Executive Order 12731 (Oct. 17, 1990); and

(5) Subchapter B of this chapter.

Lead human resources official means the agency's chief policy advisor on all human resources management issues who is charged with selecting, developing, training, and managing a high-quality, productive workforce. For agencies covered by the Chief Human Capital Officers Act of 2002 (Pub. L. 107–296), the Chief Human Capital Officer is the lead human resources official.

Person includes an individual, partnership, corporation, association, government agency, or public or private organization.

Principles of Ethical Conduct means the collection of general principles set forth in § 2635.101(b) of this chapter.

Public filer means an employee, former employee, or nominee who is required to file a public financial disclosure report, pursuant to § 2634.202 of this chapter.

Senior executive means a career or noncareer appointee in the Senior Executive Service or equivalent federal executive service. It also includes employees in Senior Level (SL) and Senior Technical (ST) positions. In addition, it includes equivalent positions in agencies that do not have a federal executive service.

Special Government employee means an employee who meets the definition at 18 U.S.C. 202(a). The term does not relate to a specific category of employee, and 18 U.S.C. 202(a) is not an appointment authority. The term describes individuals appointed to positions in the executive branch, the legislative branch, any independent agency of the United States, or the District of Columbia who are covered less expansively by conflict of interest laws at 18 U.S.C. 202–209. As a general matter, an individual appointed to a position in the legislative or executive branch who is expected to serve for 130 days or less during any period of 365 consecutive days is characterized as a special Government employee. The appointment of special Government employees is not administered or overseen by the Office of Government Ethics but is carried out under legal authorities administered by the Office of Personnel Management and other agencies.

Standards of Conduct means the Standards of Ethical Conduct for Employees of the Executive Branch set forth in part 2635 of this chapter.

§ 2638.604 Key program dates.

Except as amended by program advisories of the Office of Government Ethics, the following list summarizes key deadlines of the executive branch ethics program:

(a) *January 15* is the deadline for:

(1) The Office of Government Ethics to issue its year-end status reports, pursuant to § 2638.108(a)(11); and

(2) In an agency with 1,000 or more employees, any office not under the supervision of the DAEO that provides notices or training required under subpart C of this part to provide a written summary and confirmation, pursuant to § 2638.310.

(b) *February 1* is the deadline for the DAEO to submit the annual report on the agency's ethics program, pursuant to § 2638.207.

(c) *February 15* is the deadline for employees to file annual confidential financial disclosure reports, pursuant to § 2634.903(a) of this chapter.

(d) *May 15* is the deadline for employees to file annual public financial disclosure reports, pursuant to § 2634.201(a) of this chapter.

(e) *May 31* is the deadline for the agency to submit required travel reports to the Office of Government Ethics, pursuant to § 2638.107(g).

(f) *July 1* is the deadline for the DAEO to submit a letter stating whether components currently designated should remain designated, pursuant to § 2641.302(e)(2) of this chapter.

(g) *November 30* is the deadline for the agency to submit required travel reports to the Office of Government Ethics, pursuant to § 2638.107(h).

(h) *December 31* is the deadline for completion of annual ethics training for employees covered by §§ 2638.307 and 2638.308.

(i) *By the deadline specified in the request* is the deadline, pursuant to § 2638.202, for submission of all documents and information requested by the Office of Government Ethics in connection with a review of the agency's ethics program, except when the submission of the information or reports would be prohibited by law.

(j) *Prior to appointment whenever practicable but in no case more than 15 days after appointment* is the deadline, pursuant to § 2638.105(a)(1), for the lead human resources official to notify the DAEO that the agency has appointed a confidential or public financial disclosure filer.

(k) *Prior to termination whenever practicable but in no case more than 15 days after termination* is the deadline, pursuant to § 2638.105(a)(2), for the lead human resources official to notify the DAEO of the termination of a public financial disclosure filer.

(l) *Within 15 days of appointment* is the deadline for certain agency leaders to complete ethics briefings, pursuant to § 2638.305(b).

(m) *Within 30 days of designation* is the deadline for the agency head to notify the Director of the designation of any DAEO or ADAEO, pursuant to § 2638.107(a).

(n) *Within 3 months of appointment* is the deadline for new employees to complete initial ethics training, pursuant to § 2638.304(b).

(o) *Within 1 year of appointment* is the deadline for new supervisors to receive supervisory ethics notices, pursuant to § 2638.306(b).

(p) *Not later than 12 months before any Presidential election* is the deadline for the agency head or the DAEO to evaluate whether the agency's ethics program has an adequate number of trained agency ethics officials to deliver effective support in the event of a Presidential transition, pursuant to § 2638.210(a).

[FR Doc. 2016–26418 Filed 11–1–16; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF THE INTERIOR

5 CFR Part 3501

[Docket ID: DOI–2016–0007; 167D0102R2; DS636440000; DR2000000.CH7000]

RIN 1092–AA12

Supplemental Standards of Ethical Conduct for Employees of the Department of the Interior

AGENCY: Department of the Interior (DOI).

ACTION: Direct final rule.

SUMMARY: The Department of the Interior (DOI), with the concurrence of the Office of Government Ethics (OGE), is amending the Supplemental Standards of Ethical Conduct for Employees of the Department of the Interior (Supplemental Standards). The Supplemental Standards apply only to DOI personnel and augment the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards). This direct final rule amends portions of the Supplemental Standards to account for the current DOI structure resulting from organizational changes that established new bureaus and an office within DOI.

DATES: This rule is effective on January 3, 2017 unless we receive any significant adverse comments on or before December 2, 2016. If adverse comment is received, DOI will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments on this rule by either of the methods listed below. Please use Regulation Identifier Number 1092–AA12 in your message.

1. Federal eRulemaking Portal: *http://www.regulations.gov*. In the ''Search'' bar, enter DOI–2016–0007 (the docket number for this rule) and then click ''Search.'' Follow the instructions on the Web site for submitting comments.

2. U.S. mail, courier, or hand delivery: Departmental Ethics Office, Department of the Interior, 1849 C Street NW., MS 7346, Washington, DC 20240.

We request that you send comments only by one of the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT: Edward McDonnell, Departmental Ethics Office, *edward.mcdonnell@sol.doi.gov*, (202) 208–5916.

SUPPLEMENTARY INFORMATION.

I. Background

On August 7, 1992, OGE published the OGE Standards, which, as corrected and amended, are codified at 5 CFR part 2635 (57 FR 35006). Effective on February 3, 1993, the OGE Standards establish uniform standards of ethical conduct that apply to all executive branch officers and employees. Section 2635.105 of the OGE Standards authorizes an agency, with the concurrence of OGE, to adopt and jointly issue agency-specific supplemental regulations that are necessary to properly implement its ethics program. On October 16, 1997, DOI, with OGE's concurrence and joint issuance, established the Supplemental Standards that became effective on June 24, 1998. See 62 FR 53713–53726; 63 FR 34258–34259. Employees of DOI are subject to the Supplemental Standards promulgated by OGE and DOI. The Supplemental Standards are necessary for successful implementation of DOI's ethics program in light of DOI's unique programs and operations. DOI is therefore amending portions of the Supplemental Standards to account for current DOI structure resulting from organizational changes that established new bureaus and an office within DOI.

II. Analysis of the Regulation

A. Section 3501.102 Designation of Separate Agency Components

The direct final rule amends § 3501.102(a) of the Supplemental Standards to reflect the current organizational structure mandated by Secretarial Order 3299 issued on May 19, 2010, and as further amended, in accordance with statutory authority that resulted in the establishment of new bureaus and an office within DOI. As currently organized and relevant to the Supplemental Standards, the duties and responsibilities of the former Minerals Management Service (MMS) were separated and reassigned to two newly established bureaus and an office. The new bureaus and office are the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), and the Office of Natural Resources Revenue (ONRR). BOEM and BSEE are distinct and separate bureaus under the Assistant Secretary for Land and Minerals Management. Section 2635.203(a) of the OGE Standards authorizes an executive department, by supplemental regulation, to designate as a separate agency any component of the department that the department determines exercises a distinct and separate function. Pursuant to this authority, DOI amends the Supplemental Standards to designate BOEM and BSEE as separate agencies in § 3501.102(a) for purposes of the regulations contained in subpart B of 5 CFR part 2635, government gifts from outside sources, including determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d); 5 CFR 2635.807 governing teaching, speaking and writing; and § 3501.105(b) of this part governing prior approval requirements for outside employment by an employee with a prohibited source (other than for an employee of the U.S. Geological Survey or for a special Government employee). ONRR is organizationally placed within DOI under the Assistant Secretary for Policy, Management and Budget. Therefore, ONRR is included in the remainder of DOI under § 3501.102(b).

B. Section 3501.103 Prohibited Interests in Federal Lands

The direct final rule amends § 3501.103(b)(1)(i) of the Supplemental Standards to include all BOEM, BSEE and ONRR employees in the restrictions against holding financial interests in Federal lands or resources administered or controlled by DOI. Following the establishment of MMS in 1982, to address ethics concerns, DOI promulgated a regulation extending the restrictions on ownership of interests in Federal lands to all employees of the MMS. See 62 FR 53714 (October 16, 1997). Therefore, in order to continue to protect the integrity of the programs of the former MMS, that were subsequently reassigned to the newly established entities of BOEM, BSEE and ONRR, DOI is revising § 3501.103(b) to explicitly cover all employees of these three entities.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory

Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. The OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

This direct final rule is not a ''significant regulatory action'' under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, this direct final rule is not subject to review by OMB. As discussed previously, this direct final rule only regulates DOI employees and consequently does not impose any additional direct costs on the private sector. In addition, DOI does not believe this rulemaking would increase government costs. The direct final rule is also expected to result in stronger public confidence in the integrity of DOI programs and operations.

This direct final rule will not impact the ability of BOEM, BSEE or ONRR to accomplish their missions and will not impact off-shore operators, lessees, contractors, or third parties. It is an internal procedural rule applicable solely to BOEM, BSEE, and ONRR employees and establishes rules for ethical conduct in the performance of official duties that protects their integrity and impartiality.

Administrative Procedures Act—Direct Final Rule

We are publishing this rule as a direct final rule because we view this action as an administrative action that relates solely to certain DOI employees and is non-controversial. This rule will be effective on the date shown in the **DATES** section unless we receive any significant adverse comments on or before the deadline for comments set forth in the **DATES** section. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. If we receive any significant adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. If we receive no significant adverse comments, we will publish a document in the **Federal Register** confirming the effective date.

Regulatory Flexibility Act

DOI certifies that this direct final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not affect any small entities. It affects only certain DOI employees.

Small Business Regulatory Enforcement Fairness Act

This direct final rule is not a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act. This direct final rule:

a. Will not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This direct final rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The direct final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this direct final rule does not have significant takings implications. The direct final rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this direct final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This direct final rule will not substantially and directly affect the relationship between the Federal and State governments. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This direct final rule complies with the requirements of E.O. 12988. Specifically, this direct final rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this direct final rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that it has no potential effects on federally recognized Indian tribes.

Paperwork Reduction Act (PRA)

The direct final rule contains no new public reporting or recordkeeping requirements, and an OMB submission under the PRA is not required. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, the public is not required to respond.

National Environmental Policy Act

This direct final rule does not constitute a major Federal action significantly affecting the quality of the human environment. DOI analyzed this direct final rule under the criteria of the National Environmental Policy Act and implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) and DOI (43 CFR part 46). This direct final rule meets the criteria set forth in 43 CFR 46.210(i) for a Departmental ''Categorical Exclusion'' in that this direct final rule is a regulation ''of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects

are too broad, speculative, or conjectural to lend themselves to meaningful analysis. . . .'' Further, DOI has analyzed this direct final rule to determine if it meets any of the extraordinary circumstances that will require an environmental assessment or an environmental impact statement as set forth in 43 CFR 46.205. DOI has concluded that this direct final rule does not meet any of the criteria for extraordinary circumstances as set forth in 43 CFR 46.215(a) through (l).

Data Quality Act

In developing this direct final rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Nation's Energy Supply (E.O. 13211)

This direct final rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

Executive Orders 12866 and 12988 and the Presidential Memorandum of June 1, 1998, require the Department to write all rules in plain language. This means that each rule the Department publishes must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that the Department did not meet these requirements, please send comments by one of the methods listed in the **ADDRESSES** section. To better help the Department revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, and the sections where you believe lists or tables would be useful.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask the Department in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you send an email comment directly to the Department without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the Department recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the Department cannot read your comment due to technical difficulties and cannot contact you for clarification, the Department may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses.

The Department cannot ensure that comments received after the close of the comment period (*see* **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

List of Subjects in 5 CFR Part 3501

Conflict of interests, Department components, Gifts, Government employees, Prior approval of outside employment, Speaking and writing, and Teaching.

Dated: October 27, 2016.

Melinda J. Loftin,

Designated Agency Ethics Official, Department of the Interior.

Approved: October 27, 2016.

Walter M. Shaub, Jr.,

Director, U.S. Office of Government Ethics.

For the reasons stated in the preamble, DOI, with the concurrence of OGE, amends title 5 of CFR part 3501 as follows:

PART 3501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE INTERIOR

■ 1. The authority citation for part 3501 is revised to read as follows:

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 30 U.S.C. 1211; 43 U.S.C. 11, 31(a); E.O. 12674, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.502, 2635.803, 2635.807.

■ 2. In § 3501.102 revise paragraph (a) to read as follows:

§ 3501.102 Designation of separate agency components.

(a) Each of the following eleven components of the Department is designated as an agency separate from each of the other ten listed components and, for employees of that component, as an agency distinct from the remainder of the Department, for purposes of the regulations in subpart B of 5 CFR part 2635 governing gifts from outside sources, 5 CFR 2635.807 governing teaching, speaking and writing, and § 3501.105 requiring prior approval of outside employment. However, the following eleven components are not deemed to be separate agencies for purposes of applying any provision of 5 CFR part 2635 or this part to employees of the remainder of the Department:

(1) Bureau of Indian Affairs, including the Office of Indian Education Programs;

(2) Bureau of Land Management;

(3) Bureau of Reclamation;

(4) Bureau of Ocean Energy Management;

(5) Bureau of Safety and Environmental Enforcement;

(6) National Indian Gaming Commission;

(7) National Park Service;

(8) Office of Surface Mining Reclamation and Enforcement;

(9) Office of the Special Trustee for American Indians;

(10) U.S. Fish and Wildlife Service; and

(11) U.S. Geological Survey.

* * * * *

■ 3. In § 3501.103 revise the heading of paragraph (b), and paragraph (b)(1)(i), to read as follows:

§ 3501.103 Prohibited interest in Federal lands.

* * * * *

(b) *Prohibited financial interests in Federal lands for employees of the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue and for the Secretary and employees of the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer who are in positions classified at GS–15 and above.* (1) * * *

(i) All employees of the Bureau of Ocean Energy Management, Bureau of Safety and Environmental Enforcement, and Office of Natural Resources Revenue; and

* * * * *

[FR Doc. 2016–26458 Filed 11–1–16; 8:45 am]

BILLING CODE 4335–30–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1200, 1201, 1229, 1238, 1239, 1261, 1264, 1266, 1267, 1269, 1270, 1273, 1274, 1278, 1281, 1282, 1290, and 1291

RIN 2590–AA80

Technical and Conforming Changes and Corrections to FHFA Regulations

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is amending its rules to make a number of conforming changes and corrections intended to fix citations, provide for consistent use of terminology, and remove duplicative definitions. FHFA is also removing provisions that are no longer applicable, clarifying other provisions by incorporating language to implement existing FHFA regulatory interpretations, and making other changes and corrections.

DATES: Effective December 2, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas E. Joseph, Associate General Counsel, *Thomas.Joseph@fhfa.gov,* 202–649–3076 (this is not a toll-free number), Office of General Counsel, Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA) [1] created FHFA as a new independent agency of the federal government. HERA transferred to FHFA the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), and of the Federal Housing Finance Board (Finance Board) over the Federal Home Loan Banks (Banks) and the Bank System's Office of Finance. Under the legislation, the Enterprises, the Banks, and the Office of Finance continue to operate under regulations promulgated by OFHEO and the Finance Board until such regulations are superseded by regulations issued by FHFA.[2]

[1] Public Law 110–289, 122 Stat. 2654.

[2] *See* 12 U.S.C. 4511, note.

II. The Final Rule

A. The Proposed Amendments

In May 2016, FHFA issued a Notice of Proposed Rulemaking (NPR) that would have amended its regulations to make a number of technical and conforming changes and corrections that corrected citations, provided for consistent use of terminology, and removed outdated or duplicative provisions and definitions.[3] While most of the changes represented technical corrections, some of the proposed changes removed provisions that FHFA believed were no longer applicable, clarified provisions to incorporate FHFA regulatory interpretations of the particular rule, or changed provisions to better reflect statutory requirements. As a result, FHFA requested public comments on all of the proposed changes. The comment period for the NPR closed on July 25, 2016.

FHFA intended the NPR to address errors that had arisen in its regulations as it amended, readopted, and transferred a large number of the Finance Board or OFHEO regulations. Given that this process occurred over several years, not all cross-references in the FHFA current regulations are correct. In addition, in January 2013, FHFA adopted 12 CFR part 1201 (part 1201), which provides general definitions of terms used in all FHFA's regulations. Not all terminology in FHFA's regulations is consistent with the terms in part 1201. FHFA also identified certain provisions in its regulations that require corrections to bring them more in line with statutory mandates. Finally, a number of provisions in the regulations address now-completed transition periods or events or otherwise do not have future applicability to the Enterprises or the Banks.

B. Comments Received

FHFA received two comments on the NPR. One comment letter was a joint letter from all eleven Banks. The other came from a smaller group of Banks. One comment letter objected to the proposed removal of the provision on out-of-district advances from the regulations and to statements FHFA made in the preamble of the proposed rule about the need for Banks to assure that members capitalize any participated advances. It also identified additional errors in current regulations that FHFA had not included in the proposed rule and suggested a change to one of the definitions proposed by FHFA. The other letter did not comment specifically on any amendments proposed by FHFA but objected to some aspects of what FHFA described in the preamble as the current policy for identifying which Bank directorships would be eliminated when a state is slated to lose a director's seat as a result of the annual designation of directorships.[4]

Proposal To Remove § 1266.25. One comment letter objected to FHFA's proposal to remove from its regulations § 1266.25, a provision that authorizes a Bank to become a creditor to a member of another Bank through the purchase of an outstanding advance (or a participation interest therein) from the other Bank, or ''through an arrangement with the other Bank that provides for the establishment of such a creditor/debtor relationship at the time the advance is made.'' The commenters believed that removal of the provision, coupled with FHFA's statement in the preamble that non-members of a purchasing Bank would need to capitalize any participation interest in their advances that are sold to that Bank, will result in eliminating long-standing authority that allowed Banks to purchase such advances.[5] The commenters contended that when the Finance Board adopted the predecessor regulation to § 1266.25 in 2000, it did not mention requiring non-member capitalization of such out-of-district participation interests, but instead stated that the purpose of the rule was to assure that the Bank performed the same level of due diligence as that applied to in-district advances.

While the comment letter contended that the Finance Board did not require the capitalization of participation interests in advances when it originally adopted what is currently § 1266.25, the rule specifically states that any creditor/debtor relationships established under the rule ''shall be subject to all the provisions of [the advances regulation] that would apply to an advance made by a Bank to its own members or housing associates.'' [6] One of the provisions in

[3] *See,* Proposed Rule: Technical and Conforming Changes and Corrections to FHFA Regulations, 81 FR 33424 (May 26, 2016) (hereinafter ''Proposed Rule'').

[4] *See* Proposed Rule, 81 FR at 33427–28.

[5] In the NPR, FHFA noted that:

Removal of this provision [§ 1266.25] would not prevent one Bank from selling an advance or participation to another Bank, based solely on the statutory authority, but FHFA would expect that before doing so a Bank would first obtain the concurrence of FHFA about how a non-member could capitalize those advances through some means other than buying stock. Proposed Rule, 81 FR at 33430.

[6] The commenter noted that current § 1266.25 is identical, except for some minor changes in word order, to the provision adopted at 12 CFR 950.18 in July 2000.

the Finance Board advances regulation, at the time current § 1266.25, was originally adopted in 2000, prohibited a Bank from making an advance to one of its members if the aggregate amount of the outstanding advances to that member would exceed 20 times the amount paid in by such member for the Bank's capital stock.[7] Thus, as written, the out-of-district advances rule by its terms would appear to have required the capitalization of an out-of-district advance involving a member of another Bank, whether it was established through sale of a participation interest or through creation of a direct creditor/debtor relationship between a Bank and a member of another Bank.

In fact, part of FHFA's reason for proposing to delete § 1266.25 is the ambiguity and difficulty in applying the broad requirement that any participation interest in an advance or direct creditor/debtor relationship with an out-of-district member meet all requirements of the advances regulation, as if that out-of-district member were a member of the Bank ultimately holding the advance.[8] Moreover, as FHFA also noted, the provision does not add meaningfully to the clear statutory authority that allows Banks to buy or sell advances or participation interests in advances to other Banks.[9] As written, § 1266.25 requires that in order to purchase an advance or participation interest in an advance made by another Bank, the purchasing Bank would have to assure the transaction is structured to meet all the same requirements that apply to an advance that the purchasing Bank makes to its own members. This requirement appears to add complexity to these sales and to create uncertainties for these transactions. As a result, the comments received in response to the proposal to delete § 1266.25 do not alter FHFA's underlying reasons for proposing to remove the provision, and FHFA has determined to adopt the final rule as proposed.

The comment letter, however, correctly noted that prior to the adoption of the predecessor to § 1266.25, the Finance Board had not required non-member capitalization of participated advances. The comment letter, therefore, raised a fair point that FHFA's statements in the preamble about capitalization of participation interests were likely to create uncertainties about the Banks' ability to exercise their statutory authority to buy and sell participation interests in advances. Notwithstanding the language of the preamble to the NPR, FHFA did not intend to alter the long-standing agency policy that allows a Bank to purchase a participation interest in an advance made by another Bank without requiring the borrowing member to capitalize the participation interest acquired by the purchasing Bank. The final rule does nothing to change that policy, and thus the Banks may continue to purchase and sell participation interests in advances as they have done previously. The only substantive effect of removing § 1266.25 is to eliminate the language that addresses the establishment of debtor/creditor relationships other than those created through the sale of a participation interest in an advance. Because that provision does not describe the type of relationships encompassed by its language, it has created some uncertainty as to its scope, which has prompted inquiries from the Banks about what types of transactions are permitted. FHFA has informally advised some Banks that the ''arrangement with the other Bank'' language of § 1266.25(a) does not authorize a Bank to originate an advance to a member of another Bank, nor does it authorize a Bank to issue standby letters of credit on behalf of a member of another Bank. By removing that language FHFA will eliminate such uncertainties and should not adversely affect any Bank because none has established any such debtor/creditor relationships with members of other Banks in reliance on that provision.

Proposed Changes to Part 1261. Another comment expressed concerns about FHFA statements in the **SUPPLEMENTARY INFORMATION** section of the NPR relating to how FHFA determines which member directorship to eliminate when, in the annual designation of directorships, FHFA allocates to a particular state fewer directorships for the coming year than it has in the current year. Specifically, commenters took issue with FHFA's statement that if a state were going to lose a member directorship at the start of the next year and such state had a member directorship slated to expire at the end of the current year, then the Bank would eliminate the directorship—and the director—with the expiring term.[10] The commenters argued that this statement constituted a change in agency policy and as such should have been the subject of a substantive rulemaking. They also argued that in this situation, a Bank's board of directors should be able to designate which directorship for the particular state would be eliminated, as is the case when FHFA reduces the number of directorships for a state which has no director with a term expiring that year. Without discretion to make such determinations, commenters stated, Banks' boards of directors could suffer adverse consequences, including losing key members.

As an initial matter, these comments did not address any of the specific technical amendments that FHFA proposed to make to the part 1261 regulation. Indeed, FHFA did not propose to revise any regulations pertaining to the reduction of directorships caused by the annual designation process, and the preamble statements that appear to have prompted the comments were simply background information that FHFA provided as context to the FHFA's proposed revisions to other provisions of part 1261. As background information, the preamble statements did not purport to make any changes to agency policy regarding Bank directorships, but simply described the existing practice for one particular situation. Therefore, FHFA is not making any changes in the final rule as a result of these comments.

Moreover, FHFA disagrees with the comment letter's contention that a Bank's board of directors should be permitted in all cases to determine which particular directorship must be eliminated when the annual designation of directorships reduces the number of directorships allocated to a particular state. By statute, FHFA is required annually to establish the size of the board of directors for each Bank and to designate the number of member directorships to be allocated to each state within each Bank's district. Occasionally, FHFA's designation of directorships order reduces the number of directorships allocated to a particular state, which means that one of the incumbent directorships must be eliminated as of the end of that calendar year. If one of those directorships has a

[7] *See* 12 CFR 935.15(a) (2000). Effective February 18, 2000, § 935.15 of the Finance Board regulations was re-designated without substantive change as § 950.15. *See* 65 FR 8253, 8254 (Feb. 18, 2000). This provision was again later re-designated without further amendment as § 950.11 in July 2000. *See* 65 FR. 44414, 44430 (July 18, 2000). This provision is currently found at 12 CFR 1266.11(a) but applied only to Banks that had not converted to the Gramm-Leach-Bliley capital structure. As a consequence, FHFA proposed to delete it in the NPR. *See* Proposed Rule, 81 FR at 33430.

[8] *See id.*

[9] 12 U.S.C. 1430 (d) provides in relevant part that: ''Any Federal Home Loan Bank shall have power to sell to any other Federal Home Loan Bank, with or without recourse, any advance made under the provision of this chapter, or to allow such [B]ank a participation therein, and any other Federal Home Loan Bank shall have power to purchase such advance or accept a participation therein, together with an appropriate assignment of security therefor.''

[10] *See* Proposed Rule, 81 FR at 33427–28.

term that will expire as of the end of that calendar year, the reduction in board size required by FHFA's designation of directorships order is effectively self-executing, *i.e.,* the expiration of the term of office for one director automatically brings the board size into compliance with the size authorized by the designation order. To allow the Banks to do what the commenter has suggested, *i.e.,* retain the director with the expiring term, would necessarily require that the Bank take some action to remove from its board a director whose term of office has not expired, so that the number of directorships for that state does not exceed the number authorized by FHFA. A Bank, however, has no legal authority to remove a sitting director from the Bank's board of directors, and thus could not require an incumbent director whose term is not expiring to leave the board. This situation differs from that in which FHFA reduces the number of directorships allocated to a particular state, which has no directorships expiring at the end of the year. In that case, the designation of directorships order is what terminates one of the member directorships, and effectively delegates to the Bank's board of directors the authority to determine which particular directorship has been terminated. In those circumstances, there is no legal issue relating to the removal of an incumbent director prior to the expiration of his or her term because, as of the effective date of the designation of directorships order, the directorship would have ceased to exist and there would be no office from which the person was being removed.

Proposed Definition of President. Commenters also suggested that FHFA alter the proposed definition of ''president'' to read ''the individual who serves as the highest ranking executive officer of a Bank.'' The NPR proposed to define president, when used to describe an officer of a Bank, as ''a Bank's principal executive officer.''

The commenters did not provide a reason for the suggested change or why FHFA's proposed definition was problematic. FHFA notes that the Securities Exchange Commission (SEC) uses the term ''principal executive officer'' in the context of its disclosure rules on compensation, which the Banks already apply.[11] FHFA also believes the reference to ''principal executive officer'' is clearer and more straightforward than trying to identify which Bank officer outranks another or to quantify the ranking among executive officers. Thus, FHFA is adopting the definition of ''president'' as proposed.

Additional Technical Corrections. Finally, commenters identified additional corrections to FHFA's regulations that were not included as part of the NPR. FHFA agrees that commenters identified clear errors with FHFA's current regulations and is therefore adopting the corrections suggested by commenters as part of the final rule.

First, commenters pointed out that cross references in 12 CFR 1266.17(c)(2) to § 1266.3(b) of FHFA's rules appear to be incorrect, and the reference instead should be to § 1266.5(b). FHFA agrees and is adding to the final rule a provision to make this correction. The cross reference in § 1266.17(c)(2) is intended to incorporate standards that Banks must apply when making advances to members to any advance that a Bank makes to a housing associate. The current cite in the rule to § 1266.3(b), however, references requirements that apply to long-term advances made to members rather than the pricing criteria, which are set forth in § 1266.5(b). The Finance Board appears to have added the erroneous cross reference to the rule when it first adopted it in 2002, and FHFA carried over the mistake to part 1266 when it re-adopted the rule in 2010.[12]

Second, commenters identified two corrections to appendix A of part 1273 (appendix A), which sets forth exceptions to the general SEC disclosure standards that the Office of Finance (OF) otherwise must follow in preparing the Bank System's Combined Financial Report. The first error is a reference to ''Item 402(1) of SEC Regulation S–K'' in paragraph C of appendix A. SEC Regulation S–K, however does not contain an ''Item 402(1).'' The Finance Board erroneously cited to ''Item 402(1), 17 CFR 229.402(1)'' when it first adopted appendix A in 2000.[13] FHFA, however, cannot determine what provision in Regulation S–K, the Finance Board intended to reference. Nor can FHFA identify any other SEC item that might be relevant to the matters addressed in paragraph C of appendix A. As a result, FHFA intends to delete the reference to ''Item 402(1) of SEC Regulation S–K,'' as suggested by commenters.

Commenters also pointed out that a statement in paragraph D of appendix A is no longer accurate given recent regulatory changes. Specifically, paragraph D, which addresses matters submitted for shareholder vote, contains a statement that: ''The only item shareholders vote upon is the annual election of directors.'' Under the voluntary merger rules adopted by FHFA after HERA, however, a Bank's shareholders also may vote to ratify a voluntary merger agreement between their Bank and another Bank.[14] Thus, given that the statement about member voting is no longer accurate and adds nothing substantive to the appendix item at issue, FHFA is deleting the sentence as suggested by commenters.

C. The Final Rule

As just discussed, FHFA is adopting as part of the final rule a number of additional technical corrections suggested by commenters but is otherwise not changing the proposed rule based on the comments received. In addition, FHFA is updating the table in § 1200.4 providing the Office of Management and Budget (OMB) control numbers and expiration dates for FHFA information collections under the Paperwork Reduction Act to reflect recent OMB actions and approvals.

Further, after publication of the NPR, FHFA identified additional instances in which terms defined in part 1201 of its regulations, which provides general definitions applicable to all FHFA regulations, are also defined in other FHFA regulations. As a result, FHFA is adopting provisions as part of this final rule to remove duplicative definitions from part 1281 for the terms ''Bank System'' and ''data reporting manual (DRM)'' and from part 1282 for the term ''HUD.'' [15] FHFA is also adopting in the final rule a correction to a cross-reference in 12 CFR 1266.10 to the FHFA regulation addressing the Banks' member product policies. The member products policy regulation was located at 12 CFR 917.4 but FHFA recently transferred it to 12 CFR 1239.30, although FHFA did not update the cross reference in 12 CFR 1266.10 at that time.[16]

Other than incorporating the additional corrections highlighted above, FHFA is adopting the changes proposed by the NPR as final without further substantive changes.

[11] *See* 17 CFR 229.402.

[12] *See* Final Rule: Technical Amendments to Federal Housing Finance Board Regulations, 57 FR12841, 12851 (Mar. 20, 2002). *See, also,* Final Rule: Use of Community Development Loans by Community Financial Institutions to Secure Advances; Secured Lending by Federal Home Loan Banks to Members and Their Affiliates; Transfer of Advances and New Business Activity Regulation, 75 FR 76617, 76622 (Dec. 9, 2010).

[13] *See* Final Rule, Office of Finance; Authority of Federal Home Loan Banks to Issue Consolidated Obligations, 65 FR 36290, 36303 (June 7, 2000).

[14] *See* 12 CFR 1278.6.

[15] 12 CFR parts 1281 and 1282.

[16] *See* Final Rule: Responsibilities of Boards of Directors, Corporate Practices and Corporate Governance Matters, 80 FR 72327 (Nov. 19, 2015).

D. Considerations of Differences Between the Banks and the Enterprises

When promulgating regulations relating to the Banks, section 1313(f) of the Safety and Soundness Act requires the Director to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability.[17] The changes made in this rulemaking correct existing FHFA regulations or are clarifying and conforming in nature. Nonetheless, FHFA, in preparing this rule, considered the differences between the Banks and the Enterprises as they related to the above factors. FHFA requested public comments about whether these differences should result in any revisions to the proposed rule, but received no comments responsive to this request.

III. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

IV. Regulatory Flexibility Act

The final rule applies only to the Banks and the Enterprises, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, FHFA certifies that this final rule does not have significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 1200

Organization and functions (Government agencies), Reporting and recordkeeping requirements, Seals and insignia.

12 CFR Part 1201

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises, Office of finance, Regulated entities.

12 CFR Part 1229

Capital, Federal home loan banks, Government-sponsored enterprises, Reporting and recordkeeping requirements.

12 CFR Part 1238

Administrative practice and procedure, Capital, Federal home loan banks, Government-sponsored enterprises, Reporting and recordkeeping requirements, Stress test.

12 CFR Part 1239

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises, Reporting and recordkeeping requirements.

12 CFR Part 1261

Banking, Banks, Conflicts of interest, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

12 CFR Parts 1264, 1266, and 1267

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 1269

Community development, Credit, Federal home loan banks, Housing, Letters of credit.

12 CFR Part 1270

Accounting, Federal home loan banks, Government securities.

12 CFR Part 1273

Federal home loan banks, Securities.

12 CFR Part 1274

Accounting, Federal home loan banks, Financial disclosure.

12 CFR Part 1278

Banks, Banking, Federal home loan banks, Mergers.

12 CFR Parts 1281 and 1290

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 1291

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, for reasons stated in the **SUPPLEMENTARY INFORMATION** and under authority of 12 U.S.C. 4511, 4513, and 4526, FHFA is amending chapter XII of title 12 of the Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Subchapter A—Organization and Operations

PART 1200—ORGANIZATION AND FUNCTIONS

■ 1. The authority citation for part 1200 is revised to read as follows:

Authority: 5 U.S.C. 552, 12 U.S.C. 4512, 12 U.S.C. 4526, 44 U.S.C. 3506.

■ 2. Add § 1200.4 to read as follows:

§ 1200.4 OMB control numbers assigned under the Paperwork Reduction Act.

(a) Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3531) and the implementing regulations of the Office of Management and Budget (OMB) (5 CFR part 1320), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(b) OMB has approved the collections of information contained in FHFA's regulations and has assigned each collection a control number. The following table displays the sections of FHFA's regulations (both those located in this chapter and those promulgated by the former Federal Housing Finance Board that appear in chapter IX of this title) containing collections of information, along with the applicable OMB control numbers and the expirations dates for those control numbers:

12 CFR part or section where identified and described	OMB control No.	Expiration date
906.5	2590–0004	07/31/2017
955.4	2590–0008	02/29/2016
1207.23	2590–0014	07/31/2018
1222.22	2590–0013	07/31/2018
1222.23	2590–0013	07/31/2018
1222.24	2590–0013	07/31/2018
1222.25	2590–0013	07/31/2018
1222.26	2590–0013	07/31/2018
1261.7	2590–0006	12/31/2017
1261.12	2590–0006	12/31/2017
1261.14	2590–0006	12/31/2017
1263.2	2590–0003	12/31/2016
1263.4	2590–0003	12/31/2016
1263.5	2590–0003	12/31/2016
1263.6	2590–0003	12/31/2016
1263.7	2590–0003	12/31/2016
1263.8	2590–0003	12/31/2016
1263.9	2590–0003	12/31/2016
1263.11	2590–0003	12/31/2016
1263.12	2590–0003	12/31/2016
1263.13	2590–0003	12/31/2016
1263.14	2590–0003	12/31/2016
1263.15	2590–0003	12/31/2016
1263.16	2590–0003	12/31/2016
1263.17	2590–0003	12/31/2016
1263.18	2590–0003	12/31/2016

[17] *See* 12 U.S.C. 4513.

12 CFR part or section where identified and described	OMB control No.	Expiration date
1263.24	2590–0003	12/31/2016
1263.26	2590–0003	12/31/2016
1263.31	2590–0003	12/31/2016
1264.4	2590–0001	12/31/2018
1264.5	2590–0001	12/31/2018
1264.6	2590–0001	12/31/2018
1266.17	2590–0001	12/31/2018
1277.28	2590–0002	12/31/2016
1290.2	2590–0005	02/29/2016
1290.3	2590–0005	02/29/2016
1290.4	2590–0005	02/29/2016
1290.5	2590–0005	02/29/2016
1291.5	2590–0007	11/30/2016
1291.6	2590–0007	11/30/2016
1291.7	2590–0007	11/30/2016
1291.8	2590–0007	11/30/2016
1291.9	2590–0007	11/30/2016

PART 1201—GENERAL DEFINITIONS APPLYING TO ALL FEDERAL HOUSING FINANCE AGENCY REGULATIONS

■ 3. The authority citation for part 1201 continues to read as follows:

Authority: 12 U.S.C. 4511(b), 4513(a), 4513(b).

■ 4. Amend § 1201.1 by revising the definition of ''Bank System'' and adding, in alphabetical order, a definition for ''President'' to read as follows:

§ 1201.1 Definitions.

* * * * *

Bank System means the Federal Home Loan Bank System, consisting of all of the Banks and the Office of Finance.

* * * * *

President, when referring to an officer of a Bank only, means a Bank's principal executive officer.

* * * * *

Subchapter B—Entity Regulations

PART 1229—CAPITAL CLASSIFICATIONS AND PROMPT CORRECTIVE ACTION

■ 5. The authority citation for part 1229 continues to read as follows:

Authority: 12 U.S.C. 1426, 4513, 4526, 4613, 4614, 4615, 4616, 4617, 4618, 4622, 4623.

■ 6. Amend § 1229.1 by revising the definitions of ''new business activity'' and ''total capital'' to read as follows:

§ 1229.1 Definitions.

* * * * *

New business activity when used in this subpart has the same meaning set forth in § 1272.1 of this chapter.

* * * * *

Total capital means the sum of the Bank's permanent capital, the amount paid-in for its Class A stock, the amount of any general allowances for losses, and the amount of any other instruments identified in a Bank's capital plan that the Director has determined to be available to absorb losses incurred by such Bank.

■ 7. Amend § 1229.6 by revising paragraph (a)(3) to read as follows:

§ 1229.6 Mandatory actions applicable to undercapitalized Banks.

(a) * * *

(3) Not make any capital distribution unless:

(i) The distribution meets the requirements of § 1229.5(b) and paragraphs (a)(3)(ii) and (iii) of this section and the Director has provided permission for such distribution as set forth in § 1229.5(b);

(ii) The capital distribution will not result in the Bank being reclassified as significantly undercapitalized or critically undercapitalized; and

(iii) The capital distribution does not violate any restriction on the redemption or repurchase of capital stock or the declaration or payment of a dividend set forth in section 6 of the Bank Act (12 U.S.C. 1426) or in any other applicable regulation;

* * * * *

§ 1229.7 [Amended]

■ 8. Amend § 1229.7(a) by removing the reference to ''§ 1229.7 or § 1229.8 of this subpart'' and adding in its place a reference to ''§ 1229.8 or § 1229.9''.

PART 1238—STRESS TESTING OF REGULATED ENTITIES

■ 9. The authority citation for part 1238 continues to read as follows:

Authority: 12 U.S.C. 1426; 4513; 4526; 4612; 5365(i).

§ 1238.1 [Amended]

■ 10. Amend § 1238.1(a) by:

■ a. Removing the reference to ''Federal Housing Finance Agency (FHFA)'' and adding in its place ''FHFA'';

■ b. Removing the reference to ''Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended'' and adding in its place ''Safety and Soundness Act''; and

■ c. Removing the reference to ''Federal Home Loan Bank Act, as amended'' and adding in its place ''Bank Act''.

§ 1238.2 [Amended]

■ 11. Amend § 1238.2 by removing the definitions for ''Federal Home Loan Banks,'' ''Federal Housing Finance Agency or FHFA,'' and ''regulated entities''.

PART 1239—RESPONSIBLITIES OF BOARDS OF DIRECTORS, CORPORATE PRACTICES, AND CORPORATE GOVERNANCE

■ 12. The authority citation for part 1239 is revised to read as follows:

Authority: 12 U.S.C. 1426, 1427, 1432(a), 1436(a), 1440, 4511(b), 4513(a), 4513(b), 4526, and 15 U.S.C. 78*oo*(b).

■ 13. Amend § 1239.32 by:

■ a. Revising paragraphs (d)(3) and (e)(4);

■ b. Removing the word ''and'' at the end of paragraph (e)(8);

■ c. Removing the period at the end of paragraph (e)(9) and adding ''; and'' in its place; and

■ d. Adding paragraph (e)(10).

The revisions and addition read as follows:

§ 1239.32 Audit committee.

* * * * *

(d) * * *

(3) Each Bank's audit committee charter shall:

(i) Provide that the audit committee has the responsibility to select, evaluate and, where appropriate, replace the internal auditor and that the internal auditor may be removed only with the approval of the audit committee;

(ii) Provide that the internal auditor shall report directly to the audit committee on substantive matters and that the internal auditor is ultimately accountable to the audit committee and board of directors;

(iii) Provide that the audit committee shall be directly responsible for the appointment, compensation, retention, and oversight of the work of the external auditor;

(iv) Provide that the external auditor shall report directly to the audit committee;

(v) Provide that both the internal auditor and the external auditor shall have unrestricted access to the audit committee without the need for any prior management knowledge or approval; and

(vi) Provide that the Bank shall make available appropriate funding, as determined by the audit committee, for payment of compensation to the external auditor, to any independent advisors or counsel engaged by the audit committee, and ordinary administrative expenses that are necessary or appropriate for the audit committee to carry out its duties.

(e) * * *

(4) Oversee the external audit function by:

(i) Approving the external auditor's annual engagement letter; and

(ii) Reviewing the performance of the external auditor.

* * * * *

(10) Establish procedures for the receipt, retention, and treatment of complaints received by the Bank regarding accounting, internal accounting controls, or auditing matters, and for the confidential, anonymous submission by employees of the Bank of concerns regarding questionable accounting or auditing matters.

* * * * *

Subchapter D—Federal Home Loan Banks

PART 1261—FEDERAL HOME LOAN BANK DIRECTORS

■ 14. The authority citation for part 1261 continues to read as follows:

Authority: 12 U.S.C. 1426, 1427, 1432, 4511 and 4526.

§ 1261.2 [Amended]

■ 15. Amend § 1261.2:

■ a. By adding, in alphabetical order, a definition for ''Advisory Council'';

■ b. In the definition of ''Member directorship'', by removing the words '', and includes guaranteed directorships and stock directorships'';

■ c. In the definition of ''Public interest directorship'', by removing the words ''four years experience'' and, in their place, adding the words ''four years of experience''; and

■ d. By removing the definition of ''Stock directorship''.

The revision reads as follows:

§ 1261.2 Definitions.

* * * * *

Advisory Council means the Advisory Council each Bank is required to establish pursuant to section 10(j)(11) of the Bank Act (12 U.S.C. 1430(j)(11)), and part 1291 of this chapter.

* * * * *

§ 1261.3 [Amended]

■ 16. Amend § 1261.3:

■ a. In paragraph (b), by removing the words ''commencing on or after January 1, 2009''; and

■ b. In paragraph (e), by removing the word ''part'', wherever it appears, and, in its place, adding the word ''subpart''.

■ 17. Amend § 1261.4 by revising paragraphs (a) and (b) to read as follows:

§ 1261.4 Designation of member directorships.

(a) *Capital stock reports.* (1) On or before April 10 of each year, each Bank shall deliver to FHFA a capital stock report that indicates, as of the record date, the number of members located in each voting State in the Bank's district, the number of shares of Bank stock that each member (identified by its FHFA ID number) was required to hold, and the number of shares of Bank stock that all members located in each voting State were required to hold. If a Bank has issued more than one class of stock, it shall report the total shares of stock of all classes required to be held by the members. The Bank shall certify to FHFA that, to the best of its knowledge, the information provided in the capital stock report is accurate and complete, and that it has notified each member of its minimum capital stock holding requirement as of the record date.

(2) The number of shares of Bank stock that any member was required to hold as of the record date shall be determined in accordance with the minimum investment established by the capital plan for that Bank.

(b) *Designation of member directorships.* Using the method of equal proportions, the Director annually will conduct a designation of member directorships for each Bank based on the number of shares of Bank stock required to be held by the members in each State as of the record date. If a Bank has issued more than one class of stock, the Director will designate the directorships for each State in that Bank district based on the combined number of shares required to be held by the members in that State. For purposes of conducting the designation, the number of shares of Bank stock required to be held by members as of that date shall be determined in accordance with the minimum investment established by the capital plan for that Bank. In all cases, the Director will designate the directorships by using the information provided by each Bank in its capital stock report required by paragraph (a)(1) of this section.

* * * * *

§ 1261.5 [Amended]

■ 18. Amend § 1261.5:

■ a. In paragraph (b), by removing the extra period following the words ''under § 1261.4(c).''; and

■ b. By removing paragraph (e)(2).

■ 19. Amend § 1261.6 by revising paragraph (b) to read as follows:

§ 1261.6 Determination of member votes.

* * * * *

(b) *Number of votes.* For each member directorship and each independent directorship that is to be filled in an election, each member shall be entitled to cast one vote for each share of Bank stock that the member was required to hold as of the record date. Notwithstanding the preceding sentence, the number of votes that any member may cast for any one directorship shall not exceed the average number of shares of Bank stock required to be held as of the record date by all members located in the same State as of the record date. If a Bank has issued more than one class of stock, it shall calculate the average number of shares separately for each class of stock, using the total number of members in a State as the denominator, and shall apply those limits separately in determining the maximum number of votes that any member owning that class of stock may cast in the election. The number of shares of Bank stock that a member was required to hold as of the record date shall be determined in accordance with the minimum investment requirement established by the Bank's capital plan.

* * * * *

§ 1261.7 [Amended]

■ 20. Amend § 1261.7:

■ a. In paragraph (a), by redesignating the first paragraph (a)(1) as the introductory text to paragraph (a);

■ b. In paragraph (d)(1)(i), by removing the words ''four years experience'' and, in their place, adding the words ''four years of experience''; and

■ c. In paragraph (e)(2), by removing the words ''four years experience'' and, in their place, adding the words ''four years of experience''.

■ 21. Amend § 1261.8 by revising paragraphs (a) and (c) to read as follows:

§ 1261.8 Election process.

(a) *Ballots.* Promptly after fulfilling the requirements of § 1261.7(f), each Bank shall prepare and deliver a ballot to each member that was a member as of the record date. The Bank shall include with each ballot a closing date for the Bank's receipt of voted ballots, which date shall be no earlier than 30 calendar days after the date such ballot is delivered to the member.

(1) A ballot shall include at least the following provisions:

(i) For states in which one or more member directorships are to be filled in the election, an alphabetical listing of the names of each nominee for such directorship, the name, location, and FHFA ID number of the member each nominee serves, the nominee's title or position with the member, and the number of member directorships to be filled by the members in that voting state in the election;

(ii) An alphabetical listing of the names of each nominee for a public

interest independent directorship and a brief description of each nominee's experience representing consumer and community interests;

(iii) An alphabetical listing of the names of each nominee for the other independent directorships and a brief description of each nominee's qualifications, including his or her knowledge or experience in the areas of financial management, auditing and accounting, risk management practices, derivatives, project development, organizational management, and any other area of knowledge or experience set forth in § 1261.7(e);

(iv) A statement that write-in candidates are not permitted; and

(v) A confidentiality statement prohibiting the Bank from disclosing how any member voted.

(2) At the election of the Bank, a ballot also may include, in the body or as an attachment, a brief description of the skills and experience of each nominee for a member directorship.

* * * * *

(c) *Lack of member directorship nominees.* If, for any voting State, the number of nominees for the member directorships for that State is equal to or fewer than the number of such directorships to be filled in that year's election, the Bank shall deliver a notice to the members in the affected voting State (in lieu of including any member directorship nominees on the ballot for that State) that such nominees shall be deemed elected without further action, due to an insufficient number of nominees to warrant balloting. Thereafter, the Bank shall declare elected all such eligible nominees. The nominees declared elected shall be included as directors-elect in the report of election required under paragraph (g) of this section. Any member directorship that is not filled due to a lack of nominees shall be deemed vacant as of January 1 of the following year and shall be filled by the Bank's board of directors in accordance with § 1261.14(a).

* * * * *

■ 22. Amend § 1261.9 by revising paragraphs (a) and (c) to read as follows:

§ 1261.9 Actions affecting director elections.

(a) *Banks.* Each Bank, acting through its board of directors, may conduct an annual assessment of the skills and experience possessed by the members of its board of directors as a whole and may determine whether the capabilities of the board would be enhanced through the addition of individuals with particular skills and experience. If the board of directors determines that the Bank could benefit by the addition to the board of directors of individuals with particular qualifications, such as auditing and accounting, derivatives, financial management, organizational management, project development, risk management practices, or the law, it may identify those qualifications and so inform the members as part of its announcement of elections pursuant to § 1261.7(a).

* * * * *

(c) *Prohibition.* Except as provided in paragraphs (a) and (b) of this section, or § 1207.21(b)(5) of this chapter, no director, officer, attorney, employee, or agent of a Bank shall:

(1) Communicate in any manner that a director, officer, attorney, employee, or agent of a Bank, directly or indirectly, supports or opposes the nomination or election of a particular individual for a directorship; or

(2) Take any other action to influence the voting with respect to any particular individual.

§ 1261.13 [Amended]

■ 23. Amend § 1261.13 by removing the words ''this part'' in the first sentence, and, in their place, adding the words ''this subpart''.

■ 24. Revise § 1261.15 to read as follows:

§ 1261.15 Minimum number of member directorships.

Except with respect to member directorships of a Bank resulting from the merger of any two or more Banks, the number of member directorships allocated to each state shall not be less than the number of directorships allocated to that state on December 31, 1960. The following table sets forth the states within Bank districts not created from the merger of two or more Banks whose members held more than one directorship on December 31, 1960:

State	Number of elective directorships on December 31, 1960
California	3
Colorado	2
Illinois	4
Indiana	5
Kansas	3
Kentucky	2
Louisiana	2
Massachusetts	3
Michigan	3
New Jersey	4
New York	4
Ohio	4
Oklahoma	2
Pennsylvania	6
Tennessee	2
Texas	3
Wisconsin	4

PART 1264—FEDERAL HOME LOAN BANK HOUSING ASSOCIATES

■ 25. The authority citation for part 1264 continues to read as follows:

Authority: 12 U.S.C. 1430b, 4511, 4513 and 4526.

§ 1264.2 [Amended]

■ 26. Amend § 1264.2 by removing the reference ''part 950 of this title'' and adding in its place the reference ''part 1266 of this chapter''.

PART 1266—ADVANCES

■ 27. The authority citation for part 1266 continues to read as follows:

Authority: 12 U.S.C. 1426, 1429, 1430, 1430b, 1431, 4511(b), 4513, 4526(a).

Subpart A—Advances to Members

■ 28. Amend § 1266.1 by revising the definition of ''Tangible capital'' to read as follows:

§ 1266.1 Definitions.

* * * * *

Tangible capital means:

(1) Capital, calculated according to GAAP, less ''intangible assets'' except for purchased mortgage servicing rights to the extent such assets are included in a member's core or Tier 1 capital, as reported in a member's Report of Condition and Income for members whose primary federal regulator is the FDIC, the OCC, or the FRB.

(2) Capital calculated according to GAAP, less intangible assets, as defined by a Bank for members that are not regulated by the FDIC, the OCC, or the FRB; provided that a Bank shall include a member's purchased mortgage servicing rights to the extent such assets are included for the purpose of meeting regulatory capital requirements. In addition, for those members that are insurance companies and that do not file or otherwise prepare financial statements based on GAAP, Banks may base this calculation on the member's financial statements prepared using Statutory Accounting Principles as implemented by the insurance company member's appropriate state regulator.

* * * * *

§ 1266.10 [Amended]

■ 29. Amend § 1266.10(a) by removing the reference to ''§ 917.4 of this title''

and adding in its place a reference to ''§ 1239.30 of this chapter''.

§ 1266.11 [Removed and Reserved]

■ 30. Remove and reserve § 1266.11.

■ 31. Amend § 1266.13 by revising paragraph (a) to read as follows:

§ 1266.13 Special advances to savings associations.

(a) *Eligible institutions.* (1) A Bank, upon receipt of a written request from the OCC, with respect to a federal savings association, or from the FDIC, with respect to a state chartered savings association, may make short-term advances to a savings association member pursuant to section 10(h) of the Bank Act (12 U.S.C. 1430(h)).

(2) Such request must certify that the savings association member:

(i) Is solvent but presents a supervisory concern to the OCC or FDIC, as appropriate, because of the member's financial condition; and

(ii) Has reasonable and demonstrable prospects of returning to a satisfactory financial condition.

* * * * *

Subpart B—Advances to Housing Associates

§ 1266.17 [Amended]

■ 32. Amend § 1266.17(c)(2)(i) by removing the reference to ''§ 1266.3(b)'' each time it appears and adding in its place a reference to ''§ 1266.5(b)''.

Subpart C [Removed]

■ 33. Remove subpart C to part 1266, consisting of § 1266.25.

PART 1267—FEDERAL HOME LOAN BANK INVESTMENTS

■ 34. The authority citation for part 1267 continues to read as follows:

Authority: 12 U.S.C. 1429, 1430, 1430b, 1431, 1436, 4511, 4513, 4526.

§ 1267.1 [Amended]

■ 35. Amend § 1267.1 by removing the definitions for ''consolidated obligation'' and ''GAAP''.

PART 1269—STANDBY LETTERS OF CREDIT

■ 36. The authority citation for part 1269 continues to read as follows:

Authority: 12 U.S.C. 1429, 1430, 1430b, 1431, 4511, 4513 and 4526.

§ 1269.4 [Amended]

■ 37. Amend § 1269.4(a)(1) by removing the reference to ''969.2 of this title'' and adding in its place a reference to ''1270.3 of this chapter''.

PART 1270—LIABILITIES

■ 38. The authority citation for part 1270 continues to read as follows:

Authority: 12 U.S.C. 1431, 1432, 1435, 4511, 4512, 4513, and 4526.

§ 1270.9 [Amended]

■ 39. Amend § 1270.9(d)(1) by removing the reference to ''§ 956.6 of this title'' and adding in its place a reference to ''§ 1267.4 of this chapter''.

PART 1273—OFFICE OF FINANCE

■ 40. The authority citation for part 1273 continues to read as follows:

Authority: 12 U.S.C. 1431, 1440, 4511(b), 4513, 4514(a), 4526(a).

§ 1273.1 [Amended]

■ 41. Amend § 1273.1 by removing the definitions for ''Bank System,'' ''Consolidated obligations,'' ''Financing Corporation or FICO,'' ''Generally accepted accounting principles or GAAP,'' ''NRSRO,'' ''Office of Finance or OF,'' and ''Resolution Funding Corporation or REFCORP''.

■ 42. Amend § 1273.3 by revising paragraphs (a) and (d) to read as follows:

§ 1273.3 Functions of the OF.

(a) *Joint debt issuance.* Subject to part 1270, subparts B and C, of this chapter, and this part, the OF, as agent for the Banks, shall offer, issue, and service (including making timely payments on principal and interest due) consolidated obligations.

* * * * *

(d) *Financing Corporation and Resolution Funding Corporation.* The OF shall perform such duties and responsibilities for FICO as may be required under part 1271, subpart D, of this chapter, or for REFCORP as may be required under part 1271, subpart E, of this chapter or authorized by FHFA pursuant to section 21B(c)(6)(B) of the Bank Act (12 U.S.C. 1441b(c)(6)(B)).

§ 1273.6 [Amended]

■ 43. Amend § 1273.6(a) by removing the reference to ''§§ 966.8 and 966.9 of this title'' and adding in its place a reference to ''§§ 1270.9 and 1270.10 of this chapter''.

■ 44. Revise § 1273.7 to read as follows:

§ 1273.7 Structure of the OF board of directors.

(a) *Membership.* The OF board of directors shall consist of part-time members as follows:

(1) Each of the Bank presidents, *ex officio,* provided that if the presidency of any Bank becomes vacant, the person designated by the Bank's board of directors to temporarily fulfill the duties of president of that Bank shall serve on the OF board of directors until the presidency is filled permanently; and

(2) Five Independent Directors who—

(i) Each shall be a citizen of the United States;

(ii) As a group, shall have substantial experience in financial and accounting matters; and

(iii) Shall not have any material relationship with a Bank, or the OF (directly or as a partner, shareholder, or officer of an organization), as determined under criteria set forth in a policy adopted by the OF board of directors. At a minimum, such policy shall provide that an Independent Director may not:

(A) Be an officer, director, or employee of any Bank or member of a Bank, or have been an officer, director, or employee of a Bank or member of a Bank during the previous three years;

(B) Be an officer or employee of the OF, or have been an officer or employee of the OF during the previous three years; or

(C) Be affiliated with any consolidated obligations selling or dealer group under contract with OF, or hold shares or any other financial interest in any entity that is part of a consolidated obligations seller or dealer group in an amount greater than the lesser of $250,000 or 0.01% of the market capitalization of the seller or dealer group, or in an amount that exceeds $1,000,000 for all entities that are part of any consolidated obligations seller dealer group, combined. For purposes of this paragraph (a)(2)(iii)(C), a holding company of an entity that is part of a consolidated obligations seller or dealer group shall be deemed to be part of the consolidated obligations selling or dealer group if the assets of the holding company's subsidiaries that are part of a consolidated obligation seller or dealer group constitute 35% or more of the consolidated assets of the holding company.

(b) *Terms.* (1) Except as provided in paragraph (b)(2) of this section, each Independent Director shall serve for five-year terms (which shall be staggered so that no more than one Independent Director seat would be scheduled to become vacant in any one year), and shall be subject to removal or suspension in accordance with § 1273.4(a). An Independent Director may not serve more than two full, consecutive terms, provided that any partial term served by an Independent Director pursuant to paragraph (b)(2) of this section shall not count as a term for purposes of this restriction.

(2) The OF board of directors shall fill any vacancy among the Independent Directors occurring prior to the scheduled end of a term by majority vote, subject to FHFA's review of, and non-objection to, the new Independent Director. The OF board of directors shall provide FHFA with the same biographic and background information about the new Independent Director required under paragraph (c) of this section, and FHFA shall have the same rights of non-objection to the Independent Director (and to appoint a different Independent Director) as set forth in paragraph (c) of this section. A person shall be elected (or otherwise appointed by FHFA) under this paragraph (b)(2) to serve only for the remainder of the term associated with the vacant directorship.

(c) *Election of Independent Directors.* The Independent Directors shall be elected by majority vote of the OF board of directors, subject to FHFA's review of, and non-objection to, each Independent Director. The OF board of directors shall provide FHFA with relevant biographic and background information, including information demonstrating that the new Independent Director meets the requirements of paragraph (a)(2) of this section, at least 20 business days before the person assumes any duties as a member of the OF board of directors. If the OF board of directors, in FHFA's judgment, fails to elect a suitably qualified person, FHFA may appoint some other person who meets the requirements of paragraph (a)(2) of this section. FHFA will provide notice of its objection to a particular Independent Director prior to the date that such Director is to assume duties as a member of the OF board of directors. Such notice shall indicate whether, given FHFA's objection, FHFA intends to fill the seat through appointment or a new election should be held by the OF board of directors.

(d) *Election of Chair and Vice-Chair.* (1) The Chair shall be elected by majority vote of the OF board of directors from among the Independent Directors then serving on the OF board of directors, and the Vice Chair shall be elected by majority vote of the OF board of directors from among all directors.

(2) The OF board of directors shall promptly inform FHFA of the election of a Chair or Vice Chair. If FHFA objects to any Chair or Vice Chair elected by the OF board of directors, FHFA shall provide written notice of its objection within 20 business days of the date that FHFA first receives the notice of the election of the Chair and or Vice Chair, and the OF board of directors must then promptly elect a new Chair or Vice Chair, as appropriate.

(e) *By-laws and Committees.* (1) The OF board of directors shall adopt by-laws governing the manner in which the board conducts its affairs, which shall be consistent with the requirements of this part and other applicable laws and regulations as administered by FHFA. The by-laws of the board of directors shall be subject to review and approval by FHFA.

(2) In addition to the Audit Committee required under § 1273.9, the OF board of directors may establish other committees, including an Executive Committee. The duties and powers of such committee, including any powers delegated by the OF board of directors, shall be specified in the by-laws of the board of directors or the charter of the committee.

(f) *Compensation.* (1) The Bank presidents shall not receive any additional compensation or reimbursement as a result of their service as a director of the OF board.

(2) The OF shall pay reasonable compensation and expenses to the Independent Directors in accordance with the requirements for payment of compensation and expenses to Bank directors as set forth in part 1261 of this chapter.

(g) *Corporate Governance and Indemnification*—(1) *General.* The corporate governance practices and procedures of the OF, and practices and procedures related to indemnification (including advancement of expenses) shall comply with applicable Federal law, rules, and regulations.

(2) *Election and designation of body of law.* (i) To the extent not inconsistent with paragraph (g)(1) of this section, the OF shall elect to follow the corporate governance and indemnification practices and procedures set forth in one of the following:

(A) The law of the jurisdiction in which the principal office of the OF is located;

(B) The Delaware General Corporation Law (Del. Code Ann. Title 8); or

(C) The Revised Model Business Corporation Act.

(ii) The OF board of directors shall designate in its by-laws the body of law elected pursuant to this paragraph (g)(2).

(3) *Indemnification.* Subject to paragraphs (g)(1) and (2) of this section, to the extent applicable, the OF shall indemnify (and advance the expenses of) its directors, officers, and employees under such terms and conditions as are determined by the OF board of directors. The OF shall be authorized to maintain insurance for its directors, the CEO, and any other officer or employee of the OF. Nothing in this paragraph (g)(3) shall affect any rights to indemnification (including the advancement of expenses) that a director, the CEO, or any other officer or employee of the OF had with respect to any actions, omissions, transactions, or facts occurring prior to December 2, 2016.

(h) *Delegation.* In addition to any delegation to a committee allowed under paragraph (e) of this section, the OF board of directors may delegate any of its authority or duties to any employee of the OF in order to enable OF to carry out its functions.

(i) *Outside staff and consultants.* In carrying out its duties and responsibilities, the OF board of directors, or any committee thereof, shall have authority to retain staff and outside counsel, independent accountants, or other outside consultants at the expense of the OF.

§ 1273.8 [Amended]

■ 45. Amend § 1273.8 by:

■ a. Removing from paragraph (d)(2) the reference to ''§ 917.5 of this title'' and adding in its place a reference to ''§ 1239.31 of this chapter'';

■ b. Removing paragraph (d)(3); and

■ c. Redesignating paragraphs (d)(4), (5), and (6) as paragraphs (d)(3), (4), and (5), respectively.

■ 46. Amend § 1273.9 by revising paragraph (b)(5) to read as follows:

§ 1273.9 Audit Committee.

* * * * *

(b) * * *

(5) The Audit Committee shall oversee internal audit activities, including the selection, evaluation, compensation, and, where appropriate, replacement of the internal auditor. The internal auditor shall report directly to the Audit Committee on substantive matters, and is ultimately accountable to the Audit Committee and the board of directors.

* * * * *

§ 1273.10 [Removed]

■ 47. Remove § 1273.10.

■ 48. Amend appendix A to part 1273 by revising paragraphs C and D to read as follows:

Appendix A to Part 1273—Exceptions to the General Disclosure Standards

* * * * *

C. Compensation. The information on compensation required by Item 402 of Regulation S–K, 17 CFR 229.402, will be provided only for Bank presidents and the CEO of the OF.

D. Submission of matters to a vote of stockholders. No information will be presented on matters submitted to

shareholders for a vote, as otherwise required by Item 4 of the SEC's form 10–K, 17 CFR 249.310.

* * * * *

PART 1274—FINANCIAL STATEMENT OF THE BANKS

■ 49. The authority citation for part 1274 continues to read as follows:

Authority: 12 U.S.C. 1426, 1431, 4511(b), 4513, 4526(a).

§ 1274.1 [Amended]

■ 50. Amend § 1274.1 by removing the definitions for ''Bank System'' and ''Financing Corporation or FICO''.

PART 1278—VOLUNTARY MERGERS OF FEDERAL HOME LOAN BANKS

■ 51. The authority citation for part 1278 continues to read as follows:

Authority: 12 U.S.C. 1432(a), 1446, 4511.

§ 1278.1 [Amended]

■ 52. Amend § 1278.1 by removing the definition for ''GAAP''.

Subchapter E—Housing Goals and Mission

PART 1281—FEDERAL HOME LOAN BANK HOUSING GOALS

■ 53. The authority citation for part 1281 continues to read as follows:

Authority: 12 U.S.C. 1430c.

Subpart A—General

§ 1281.1 [Amended]

■ 54. Amend § 1281.1 by removing the definitions for ''Bank System'', ''Data Reporting Manual (DRM)'', and ''Member''.

PART 1282—ENTERPIRSE HOUSING GOALS AND MISSION

■ 55. The authority citation for part 1282 continues to read as follows:

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566.

Subpart A—General

§ 1282.1 [Amended]

■ 56. Amend § 1282.1 by removing the definition for the term ''HUD''.

PART 1290—COMMUNITY SUPPORT REQUIREMENTS

■ 57. The authority citation for part 1290 continues to read as follows:

Authority: 12 U.S.C. 1430(g), 4511, 4513.

■ 58. Amend § 1290.1 by revising the definition of ''Advisory Council'' to read as follows:

§ 1290.1 Definitions.

* * * * *

Advisory Council means the Advisory Council each Bank is required to establish pursuant to section 10(j)(11) of the Bank Act (12 U.S.C. 1430(j)(11)) and part 1291 of this chapter.

* * * * *

PART 1291—FEDERAL HOME LOAN BANKS' AFFORDABLE HOUSING PROGRAM

■ 59. The authority citation for part 1291 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

§ 1291.4 [Amended]

■ 60. Amend § 1291.4(f) by removing the reference to ''the Act'' and adding a reference to ''the Bank Act'' in its place.

Dated: October 21, 2016.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2016–26022 Filed 11–1–16; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 234 and 241

[Docket No. DOT–RITA–2011–0001]

RIN 2105–AE41 (formerly 2139–AA13)

Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transported in Aircraft Cargo Compartments

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT or Department) is issuing a final rule that changes the mishandled-baggage data that air carriers are required to report, from the number of Mishandled Baggage Reports (MBR) and the number of domestic passenger enplanements to the number of mishandled bags and the number of enplaned bags. Fees for checked baggage may have changed customer behavior regarding the number of bags checked, potentially affecting mishandled-baggage rates. Finally, this rule fills a data gap by collecting separate statistics for mishandled wheelchairs and scooters used by passengers with disabilities and transported in aircraft cargo compartments. An additional topic covered in the proposed rule, the reporting of airline fee revenues, remains open and is not addressed in this rulemaking.

DATES: This rule is effective December 2, 2016.

FOR FURTHER INFORMATION CONTACT: Zeenat Iqbal, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202–366–9293 (phone), 202–366–5944 (fax), *zeenat.iqbal@dot.gov*. You may also contact Blane A. Workie, Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202–366–9342 (phone), 202–366–7152 (fax), *blane.workie@dot.gov*. TTY users may reach these individuals via the Federal Relay Service toll-free at 800–877–8339. You may obtain copies of this notice in an accessible format by contacting the above named individuals.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2011, the Department published a notice of proposed rulemaking (NPRM) in the **Federal Register**, 76 FR 41726, which addressed the following areas: (1) Reporting of ancillary fee revenue; (2) data for computation of mishandled-baggage rates; and (3) data for mishandled wheelchairs and scooters used by passengers with disabilities that are transported in the cargo compartment. With regard to the reporting of ancillary fee revenue, the Department proposed to collect detailed information about ancillary fees paid by airline consumers to determine the total amount of fees carriers collect through the *a la carte* pricing approach for optional services related to air transportation. The Department also proposed to alter its matrix for collecting and publishing data on mishandled baggage. For many years the Department has required the larger U.S. air carriers to report the number of Mishandled Baggage Reports (MBRs) filed by passengers and the total number of passenger enplaned. The Department then divides the number of MBRs (the numerator) by the total number of passengers enplaned (the denominator) and multiplies the result by 1,000 in order to arrive at a rate of MBRs per 1,000 passengers which it publishes in its monthly Air Travel Consumer Report. For example, if an airline reports 800 MBRs and 600,000 passengers enplaned, that carrier will have a published rate of 1.3 MBRs per 1,000 passenger enplanements. In the NPRM, rather than compute the number of Mishandled Baggage Reports per unit of domestic enplanements the Department proposed using the number of mishandled bags per unit of total bags checked. As noted in the NPRM,

passenger behavior was altered regarding the unit of bags checked when many air carriers began charging passengers for each bag that they check. We believe that airline passengers would have better information to compare airline services if the matrix for mishandled baggage were changed to the number of the actual mishandled bags per unit of checked bags rather than the number of Mishandled Baggage Reports filed by passengers per unit of domestic scheduled-service passenger enplanements. As explained below in greater detail, although the NPRM proposed to require carriers to report the total number of ''checked bags,'' in this final rule we are clarifying this term to mean the total number of ''checked bags enplaned.'' Consequently, a one-way connecting passenger would have his or her checked bag counted each time the bag was enplaned—*i.e.,* at the origin point and at the connecting point. This is consistent with the manner in which the existing rule requires the total number of passengers enplaned to be reported. Finally, the Department proposed to collect information regarding damage, delay or loss of wheelchairs and scooters transported in the aircraft cargo compartment.

The Department received 278 comments in response to the NPRM, including several representing the views of multiple entities. Of these, eight comments were from members of the airline industry, representing the views of Allegiant Air, American Airlines, Delta Air Lines, Southwest Airlines, Spirit Airlines, United Air Lines, US Airways, and Virgin America. Six comments were from industry associations, representing the views of Airports Council International, North America (ACI–NA), the Air Transport Association of America (ATA) [now known as Airlines For America (A4A)], the American Aviation Institute (AAI), the American Society of Travel Agents (ASTA), the Association of Retail Travel Agents (ARTA), and the Regional Airline Association (RAA). The Department received two comments from *FlyersRights.org* and 260 comments from individuals, including 219 from members of *FlyersRights.org*. Other consumer and disability associations, including Consumer Action, the Consumer Federation of America, Consumers Union, the Consumer Travel Alliance, the National Consumers League, the Open Doors Foundation, and the Paralyzed Veterans of America submitted comments.

On April 27, 2012, the Department published a notice of public meeting in the **Federal Register**, 77 FR 25105, listing a series of questions that the Department intended to pose to the public in order to receive input on the costs and benefits associated with the proposals outlined in the July 15, 2011, NPRM. This public meeting was held at the Department's headquarters on May 17, 2012. Attendees provided the Department with oral comments, a transcript of which is available in the public docket. Subsequent to the public meeting, American Airlines, Delta Air Lines, and US Airways submitted additional written comments.

In general, consumers, consumer associations, disability associations, and airports support the rule as proposed while many airlines and airline associations oppose it. The section-by-section analysis will describe each provision of the final rule.

On January 17, 2014, President Obama signed into law the Consolidated Appropriations Act, 2014 (Pub. L. 113–76), which included language transferring the powers and duties, functions, authorities and personnel of the Department's Research and Innovative Technology Administration (RITA) to the Office of the Assistant Secretary for Research and Technology (OST–R) in the Department's Office of the Secretary. Thus, the Office of the Assistant Secretary for Research and Technology is now an office within the Office of the Secretary. Based on the Act, this rulemaking received a new regulation identifier number.

Comments and Responses

1. Reporting of Ancillary Fee Revenue

The Department bifurcated its rulemaking on the reporting of ancillary fee revenue into two separate rules: this rule to address the reporting of data used in the computation of mishandled baggage and wheelchair/scooter rates (2104–AE41), and another rule to address the reporting of ancillary fee revenue (2105–AE31). These rulemakings were split as they address unrelated matters and their separation will make it easier for stakeholders to locate information about a particular topic embodied in each separate rule. The Department's rulemaking on the reporting of ancillary fee revenue, including an analysis of the public comments received in response to the 2011 NPRM and 2012 public meeting, remains open.

2. Mishandled Baggage

The NPRM: In the NPRM, the Department proposed changing the methodology for reporting mishandled baggage on a domestic system basis, excluding charter flights. The rule's proposed text would require reporting the number of mishandled bags rather than the number of Mishandled Baggage Reports filed by passengers, and the total number of domestic checked bags enplaned rather than the number of domestic passenger enplanements. As noted above, the Department stated in the NPRM that it believes that the current matrix for comparing airline mishandled baggage performance is outdated and the proposed changes would give airline passengers better information to compare airline services. Passenger behavior was altered regarding the number of bags checked when many air carriers began charging passengers for each bag that they check. Although the Department did not specifically solicit comments on alternative methodologies for reporting mishandled baggage, comments received from air carriers and their associations led the Department to consider alternatives discussed below.

Comments: Consumers and consumer groups, as well as ACI–NA and one carrier, Southwest Airlines, stated that the proposed methodology would render more accurate and useful results. The current methodology, these comments asserted, compares unrelated numbers since fewer passengers currently check bags than when the methodology was devised. Consumer groups commented that the Department should capture data regarding the number of mishandled bags that were checked at the gate, in addition to the number of mishandled bags that were checked at check-in counters and self-service bag drop locations.

On the other hand, A4A (excluding JetBlue and Southwest Airlines), RAA, and the carriers that submitted comments, with the exception of Southwest Airlines, contend that the Department's long-standing methodology for calculating mishandled baggage is useful and valid. They commented that the proposed methodology would cost industry more than the current methodology. Increased costs would stem primarily from recording interlined baggage, gate-checked baggage, and ''valet'' bags. (Interlined baggage is checked baggage of a passenger whose itinerary does not involve a code-share but includes more than one airline. Gate-checked baggage is baggage that the passenger brought to the gate but which was taken by the carrier at that location and checked into the baggage compartment of the aircraft. Valet bags, sometimes called planeside bags, are bags that a passenger drops at the end of the loading bridge or on the tarmac near the aircraft and which carrier personnel load into the baggage compartment of the aircraft, a process

that is frequently used by regional airlines.) In addition, individual carriers commented that the proposed methodology would mislead the public, and would benefit Southwest Airlines to the detriment of all other carriers, regardless of each carrier's ability to properly handle bags. One carrier, US Airways, disagreed with a conclusion in a report issued by the Government Accountability Office (GAO; report GAO–10–785, July 2010) that bag fees had altered consumer behavior by leading them to check fewer bags, thus resulting in fewer MBRs. A4A (excluding JetBlue and Southwest Airlines) and RAA recommended that should the Department deem a change is necessary, the denominator of the rate calculation should be the total number of domestic enplaned bags rather than origin-and-destination bags. For example, for a passenger with a checked bag who is traveling one-way from Denver to Boston with a connection (change of planes) in Chicago, a ''total enplaned bags'' system would count the bag twice, *i.e.* when it was enplaned on the Denver-Chicago flight and again when it was enplaned on the Chicago-Boston flight. An ''origin-and-destination'' system would only count the bag once, as a bag moving from Denver to Boston regardless of the flight or flights that were used.) Southwest Airlines expressed concern with using total domestic enplaned bags as the denominator, claiming that to do so would benefit hub-and-spoke carriers at the expense of point-to-point carriers.

American Airlines, Delta Air Lines, and US Airways commented that the Department severely underestimated the cost of complying with the proposed rule. They noted for gate-checked and ''valet'' bags, carriers would have to replace a manual bag tagging system with an automated one. Delta Air Lines stressed the importance of using an automated system because less than one hundredth of one percent often separates competitors in the Department's mishandled baggage rankings. That carrier estimated this would cost up to $10 million in new equipment and $900,000 in programming, while requiring 18 to 24 months to fully implement. US Airways estimated that automation would cost $1 million in new equipment and $1 million in programming. In addition, Delta Air Lines commented that the rule would cause operational delays and passenger inconvenience because of the time involved in printing and then scanning automated bag tags.

On January 12, 2016, A4A filed supplemental comments. The organization objected to language in the Notice of Proposed Rulemaking on Transparency of Airline Ancillary Fees and Other Consumer Issues (''Consumer Rule 3'') [1] that would amend the mishandled baggage reporting rule (14 CFR 234.6) to require reports ''for all domestic scheduled passenger flight segments that are held out with the reporting carrier's code . . . ,'' including flights operated for a carrier by its regional-carrier code-share partners. A4A stated that the data are not captured by flight segment today and that devising a system to do so would be costly and time-consuming. A4A also objected to language in that NPRM which the organization said could impede ''valet'' or ''planeside'' baggage service widely offered by regional carriers and would have to be coordinated with the Transportation Security Administration (TSA).

Finally, the Department received comments questioning which airline must report baggage in interline situations or when multiple airlines place their codes on a single flight.

DOT Response: The Department has decided to require that airlines report mishandled baggage in terms of the number of mishandled bags and the total number of domestic enplaned bags, excluding charter flights. A bag will be counted as ''enplaned'' on each flight of a passenger's journey. For example, if a passenger were traveling one-way from Denver to Boston with a connection in Chicago from one flight to another, the bag will be counted twice (once for each flight). Consistent with this approach, if that passenger were instead traveling on a direct flight from Denver to Boston with an intermediate stop in Chicago but no change of planes, the bag would be counted only once—when it was enplaned in Denver.

Passenger behavior was reportedly altered when many air carriers began charging passengers for each checked bag. Specifically, the GAO report cited above stated that the introduction of baggage fees resulted in a decline of 40 to 50 percent in the number of checked bags with a corresponding 40 percent decline in the number of MBRs per 1,000 passengers (GAO–10–785, July 2010, page 25). The ratio between checked bags and the number of passengers can vary greatly depending on the fees charged. Moreover, there is not a direct relationship between the number of MBRs and the number of mishandled (*i.e.,* lost, stolen, delayed, damaged, and pilfered) bags because a single MBR could be submitted by a family—or even an individual—with multiple mishandled bags. In addition, the Department has decided to include in its revised mishandled baggage methodology all checked bags, including those checked at the gate and ''valet'' bags. As the GAO noted, as the amount of checked baggage has decreased, the amount of carry-on baggage has increased, resulting in airlines' having to check more bags at the gate. The Department believes that the new methodology in this rule will better inform passengers of their chances to retrieve their gate-checked baggage in an acceptable and timely manner.

The Department agrees with the suggestion from A4A (excluding JetBlue and Southwest Airlines) and RAA that the Department use the number of domestic bag enplanements rather than origin-and-destination bags in the denominator. We have revised the language of the relevant section accordingly. Using the enplaned-bag approach will avoid the costs that would be entailed for tracking a given bag from origin to destination for connecting passengers under an origin-and-destination approach. The use of ''enplaned bag'' language in the final rule also results in a carrier receiving ''credit'' for a properly-handled bag on each flight of a passenger's journey. This ensures that when bags travel on multi-carrier itineraries or when interline agreements allow carriers to check bags through to the passenger's final destination, even when that passenger possesses more than one ticket, the operating carrier on each flight will receive ''credit'' for a properly-handled bag. For example, if a passenger travels on a flight operated by airline A from Washington, DC to Los Angeles, and a flight operated by airline B from Los Angeles to Honolulu, for the ''denominator'' figure airline A would include the passenger's checked baggage in its reporting for the Washington—Los Angeles flight while airline B would include the passenger's checked baggage in its reporting for the Los Angeles—Honolulu flight. The same piece of luggage would be reported by both airlines (on different flights), thus giving both airlines the chance to receive ''credit'' for handling the bag. Whether or not airlines A and B operate one or both of those flights as part of a code-share or as part of an interline agreement would have no impact on their reporting requirements. In the comments received from A4A (excluding JetBlue and Southwest) and RAA, the associations noted that the ''enplanement'' approach would resolve much of the complexity stemming from

[1] 79 FR 29970, May 23, 2014, Docket DOT–OST–2014–0056.

interlining, gate checking, and ''valet'' bag situations. Thus, the Department believes that adopting the suggested methodology of A4A (excluding JetBlue and Southwest) and RAA will result in lower compliance costs for air carriers.

Using the total number of domestic bag enplanements rather than bags checked for origin-destination trips further reduces the rule's cost because air carriers already count pieces of checked baggage in order to comply with the Federal Aviation Administration's (FAA) existing weight-and-balance requirements. The FAA requires that carriers maintain, for at least three months, the number of ''standard,'' ''heavy,'' and ''non-luggage'' bags carried in the cargo compartment. Delta Air Lines confirmed at the May 17, 2012, public meeting that, because of the FAA requirements, the carrier already possesses a tally of bags transported in the cargo compartment on each of its domestic scheduled flights.

With respect to A4A's January 12, 2016, supplemental comments, the language in the ''Consumer Rule 3'' NPRM concerning reporting by flight segment referred to a separate proposal in that proceeding that would require carrier reports about on-time performance, oversales, and mishandled baggage to include data for flights operated by their domestic code-share partners. The phrase ''for all domestic scheduled passenger flight segments that are held out with the reporting carrier's code'' in that NPRM was simply intended to capture the code-share operations, not to require reporting by flight segment. If this Consumer Rule 3 proposal is finalized, we will modify the phrase in question to make this clear. This final rule simply requires carriers to count the number of checked bags that are enplaned on each flight; it does not require carriers to conduct segment-by-segment tracking of the number of bags on board each segment of a direct flight, nor does it require origin-destination (''O&D'') tracking based on each passenger's itinerary.

A4A also contended in its January 12, 2016, comments that in order to comply with the instant rule as proposed, the only realistic solution for most carriers is to begin tracking ''valet bags'' in the same way that all other checked bags are tracked today—with an automated bag tag (ABT) that is linked to the passenger's Passenger Name Record, rather than the existing paper valet tags. A4A further asserted that once a bag is tagged with an ABT, TSA requires it to be treated like all other checked baggage and prohibits the traveler from having access to it in the sterile area of the airport. A4A stated that this means that carriers could no longer return these bags to passengers on the jet bridge at the conclusion of the flight. However, the rule does not require the use of ABTs. In addition, TSA has advised the Department that TSA's interest is in ensuring that passengers do not have access in the secure area of an airport to a checked bag that has not passed through the passenger security screening checkpoint. Valet bags are screened at that checkpoint. TSA explained that attaching an ABT to a bag that the passenger has carried through the screening checkpoint, or referring to such a bag as a checked bag, would not trigger the prohibition on the passenger having access to that bag in the airport's secure area.

The Department is not prescribing a particular mechanism through which air carriers must capture the data required by this rule. Carriers may adopt whichever method they find best suited to their business model. In terms of ''valet'' bags, for example, this rule does not require air carriers to provide passengers with individual bag claims that must be matched to bags on arrival; instead, air carriers need only ensure that the ''valet'' bag is properly counted in the data reported to the Department.

Finally, the Department has made a ministerial change to its proposed rule. In its NPRM, the Department cited ''49 U.S.C. 329 and chapters 41101 and 41701'' as the authority for the mishandled baggage portion of the rule. The correct citation is: ''49 U.S.C. 329, 41101 and 41701.''

3. Data for Wheelchairs and Scooters Transported in Aircraft Cargo Compartments

A. Reporting Mishandled Wheelchairs and Scooters Transported in the Cargo Compartment

The NPRM: The Department proposed requiring carriers to report the number of mishandled wheelchairs and scooters and the total number of wheelchairs/scooters transported in the aircraft cargo compartment. The Department sought public comment to better understand the scope of this issue and whether the prospect of loss, damage or delay of such devices or the lack of data made consumers with disabilities reluctant to travel by air.

Comments: In general, consumers voiced support for the proposal to require air carriers to break out data on the number of mishandled wheelchairs and scooters transported in the aircraft cargo compartment, maintaining that such reporting would reduce the number of incidents, while providing passengers with disabilities with a metric for making better-informed travel decisions. The Paralyzed Veterans of America and the Consumer Travel Alliance made similar supportive comments, noting that their members frequently request this currently-unavailable data, although the former group did request that the Department define ''mishandled'' in its regulation. ACI–NA commented that the proposed rule will increase accessibility of airports in general because passengers will know more about the air travel experience.

On the other hand, A4A (excluding Southwest Airlines) and RAA commented that the Department had no basis for concluding that passengers with disabilities are reluctant to travel by air due to wheelchair mishandling, and that the proposal lacked a public policy justification. Several air carriers asserted that the Air Carrier Access Act and its implementing regulation (14 CFR part 382) already provide carriers with an incentive to handle these devices properly. The associations, individual airlines, and ARTA commented that the proposed rule was unduly burdensome on industry. In particular, these comments noted that wheelchairs and scooters are manually tagged and checked, and thus air carriers would need to implement a new mechanism to capture the required data. In written comments, American Airlines and Delta Air Lines commented that there would be high costs involved in programming systems to differentiate wheelchairs and scooters transported in the cargo compartment from the larger universe of all checked baggage. At the May 17, 2012, public meeting, US Airways stated that costs would be high, while others, including Delta Air Lines and Southwest Airlines, indicated the opposite. As an alternative to the Department's proposal, several carriers proposed the establishment of a working group to devise a workable method of capturing the required data.

The Open Doors Foundation did not support the proposed rule. This organization commented that collecting this data would lead to competition among carriers in an area that should not be competitive, would cause airlines to reduce training and policies to the bare minimum needed to obtain ''good'' numbers, and would divert Department resources from other projects intended to make air travel more accessible.

Although A4A's comments opposing the Department's proposal represented the views of all of that association's members except Southwest Airlines, US Airways filed a supplemental comment

after the May 17, 2012, public meeting in which it indicated that it did not object to the Department's proposal to require carriers to report the number of mishandled wheelchairs and scooters transported in the aircraft cargo compartment. US Airways commented that it would need one year to update software to distinguish wheelchairs and scooters from other checked baggage and that it should have the option of stowing some assistive devices in the passenger cabin.

DOT Response: The Department has decided to require carriers to report the number of mishandled wheelchairs and scooters and the number of wheelchairs/scooters accepted for transport in the aircraft cargo compartment. The Department's applicable definition of ''mishandled'' is found at 14 CFR 234.1, which defines ''mishandled'' as ''loss, delay, damage, or pilferage.'' When issuing its NPRM, the Department intended for the same definition to apply to mishandled wheelchairs and scooters. The Department agrees with the many comments received from the public and disability rights groups that this rule will make air travel more accessible as it will provide the traveling public with the data necessary to make informed travel decisions.

The number of wheelchairs and scooters accepted for transport in the aircraft cargo compartment is to be included in the total number of checked bags enplaned. Similarly, the number of mishandled wheelchairs and scooters is to be included in the number of mishandled checked bags. We believe that the number of mishandled bags (and the rate of mishandled bags per 1,000 bags enplaned, which will be calculated by DOT and included in our Air Travel Consumer Report) should include all items of which the carrier took custody.

In response to comments from industry that there is no basis to conclude that passengers with disabilities are reluctant to travel by air due to wheelchair and scooter mishandling, the Department believes that the public comments received from air travelers with disabilities and disability rights organizations are representative of a widespread reluctance. It is public policy that air travel should be accessible to all members of the public, and the Department believes that this rule advances that policy goal. The Department appreciates that the Air Carrier Access Act and 14 CFR part 382 have provided air carriers with an incentive to handle wheelchairs and scooters properly. The Department believes that this final rule will not only act as an additional incentive, but most importantly will provide passengers with disabilities with a metric that they may use to compare air carriers and to make informed travel decisions. The Department agrees with US Airways' comment that capturing data on the incidence of wheelchair and scooter mishandling is in line with a carrier's obligations and duties to passengers with disabilities.

The Department appreciates the concerns raised by Open Doors. While we believe that air carriers do strive to provide good service to passengers with disabilities, we continue to think that consumers with disabilities have the right to know which airlines provide the best service and have a right to select their air carriers based on that knowledge. In addition, the Department's existing disability regulations already require airlines to provide training to their employees. The new rule provides further incentive to airlines to provide the training necessary to result in as little mishandling as possible to wheelchairs and scooters. Finally, this rulemaking does not divert the Department's attention from other objectives, *e.g.,* issuing rules requiring accessible in-flight entertainment systems, but instead provides passengers with mobility impairments, who represent a large segment of the population of travelers with disabilities, with information they deserve and need to make informed travel decisions.

B. Extension of the Rule to Other Assistive Devices and/or Devices Transported in the Passenger Cabin

The NPRM: The Department solicited comments on whether the rule should be extended to all wheelchairs and scooters, regardless of whether they are transported in the passenger cabin or in the cargo compartment, and whether the rule should apply to other mobility devices, *e.g.,* walkers.

Comments: Many consumers and disability rights organizations commented that the Department should extend the rule in this manner. These comments generally relied on the same rationale as for their support of the proposed reporting requirement for mishandled wheelchairs and scooters transported in the cargo compartment; namely, that the number of mishandled assistive devices will be reduced and consumers with disabilities will have data necessary to make better-informed travel decisions. The Paralyzed Veterans of America further recommended that this rule be applied to foreign air carriers and a member of the public recommended that this rule be applied to other modes of transportation. Many air carriers commented that capturing data on mishandled wheelchairs and scooters transported in the passenger cabin would prove unworkable since no data is kept about items transported in the cabin. US Airways commented that it would not oppose an extension of the rule to other mobility devices so long as the Department explicitly listed which mobility devices were covered by the rule, and so long as the Department explicitly excluded mobility devices not used by passengers with disabilities.

Members of the public made numerous recommendations intended to improve the air travel experience for passengers with disabilities. These recommendations included the creation of a uniform damage form, a requirement that air carriers maintain a list of repair shops located near each airport served, a blanket exemption from all ancillary fees for passengers with disabilities, a mandated retrofitting of aircraft so that all mobility devices may be transported in the passenger cabin, and a prohibition on the gate-checking of assistive devices.

DOT Response: The Department believes that requiring the reporting of data on the mishandling of all assistive devices, particularly those transported in the passenger cabin, is impracticable. The Department understands that airlines do not have a mechanism for tracking items carried in the passenger cabin. Further, wheelchairs and scooters are generally checked as single items, while other assistive devices are generally stored inside baggage. Requiring the reporting of data on assistive devices stored inside checked baggage would require passengers and airlines to inventory such baggage. As a result, the Department will require that carriers report data only on scooters and wheelchairs.

The Department appreciates the additional recommendations received from the general public, including the application of this rule to cover other modes or to foreign air carriers, but concludes that these recommendations fall outside the scope of the current rulemaking.

4. Compliance Date

The NPRM: The Department did not propose a specific compliance date.

Comments: None of the public comments received prior to the May 17, 2012, public meeting related to the compliance date of this rule. During the public meeting and in subsequent public comments, most air carriers commented that they would need 12 to 24 months after the final rule is published in the **Federal Register** to

comply because of time necessary for re-programming existing systems, installing new equipment, and training employees. In addition, Delta Air Lines and US Airways commented that a compliance date of January 1 would be preferable because it would provide the clearest demarcation between data sets.

DOT Response: The Department has determined that air carriers must comply with the new reporting requirements for air transportation taking place on or after January 1, 2018. The Department agrees with Delta Air Lines and US Airways that a January 1 compliance date provides a clear demarcation between data sets, corresponding with a change in the type of data reported by air carriers. In particular, given that this rule significantly changes the mishandled baggage metric, choosing the first day of the year as the compliance date will make future year-over-year comparisons more meaningful. In addition, the selection of this compliance date provides air carriers with adequate time to update their internal systems and reporting processes.

Based on this compliance date, data in this new format on mishandled baggage for the month of January 2018 will be due February 15, 2018. Data on mishandled wheelchairs and scooters transported in aircraft cargo compartments for the month of January 2018 will also be due February 15, 2018.

Regulatory Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This action has been determined not to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It has not been reviewed by the Office of Management and Budget. These changes make the measure of the published mishandled baggage rate more informative for ticket purchasers trying to assess risk. The new metric of number of bags reported as mishandled reveals more than the old figure of the number of reports of mishandled bags, since a single passenger report can cover multiple bags or even multiple passengers (*e.g.,* several members of a family). Also, the number of enplaned checked bags is more helpful than the number of passengers, particularly given that the ratio of checked bags to passengers will tend to vary among carriers depending on their baggage allowances and fees. With purchasers better informed on the comparative performance of different carriers, competition among airlines should sharpen and performance in baggage handling can be expected to improve. As for reporting of wheelchairs and scooters, making information available to the public on each carrier's performance on handling wheelchairs and scooters would enable passengers with disabilities to make better decisions about which carrier to fly. Comments submitted in this rulemaking from air travelers with disabilities and disability rights organizations suggest that fear of the airlines damaging or losing wheelchairs and scooters creates a reluctance to fly among those dependent on these devices. The expected present value of costs incurred by carriers to comply with the final rule over a 10 year period using a 7% discount rate is estimated at $2,064,588 and using a 3% discount rate is estimated at $2,483,436. The final Regulatory Evaluation has concluded that the benefits of the final rule justify its costs. A copy of the final Regulatory Evaluation has been placed in the docket.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. DOT defines small carriers based on the standard published in 14 CFR 399.73 as carriers that provide air transportation exclusively with aircraft that seat no more than 60 passengers. No small U.S. air carriers are affected by these requirements, as they apply only to the ''reporting carriers,'' *i.e.,* U.S. carriers that account for at least 1 percent of domestic scheduled passenger revenue. No small carriers as defined in 14 CFR 399.73 are included in this group. On the basis of this examination, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not include any provision that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibility among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

E. Paperwork Reduction Act

This rule adopts new and revised information collection requirements subject to the Paperwork Reduction Act (PRA). The Department will publish a separate notice in the **Federal Register** inviting the Office of Management and Budget (OMB), the general public, and other Federal agencies to comment on the new and revised information collection requirements contained in this document. As prescribed by the PRA, the requirements will not go into effect until OMB has approved them and the Department has published a notice announcing the effective date of the information collection requirements.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rule.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. Id. Paragraph 3.c.6.i of DOT Order 5610.1C categorically excludes ''[a]ctions relating to consumer

protection, including regulations.'' The purpose of this rulemaking is to change the way in which air carriers report mishandled baggage to the Department and fill a data gap by collecting separate statistics for mishandled wheelchairs and scooters used by passengers with disabilities and transported in aircraft cargo compartments. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Issued this 18th day of October, 2016, in Washington, DC.

Anthony R. Foxx,

Secretary of Transportation.

List of Subjects in 14 CFR Part 234

Air carriers, Mishandled baggage, On-time statistics, Reporting, Uniform system of accounts.

Accordingly, the Department of Transportation amends 14 CFR chapter II as follows:

PART 234—[AMENDED]

■ 1. The authority citation for part 234 is revised to read as follows:

Authority: 49 U.S.C. 329, 41101, and 41701.

■ 2. Section 234.2 is amended by adding the definition of ''Mishandled checked bag'' in alphabetical order, to read as follows:

§ 234.2 Definitions.

* * * * *

Mishandled checked bag means a checked bag that is lost, delayed, damaged or pilfered, as reported to a carrier by or on behalf of a passenger.

* * * * *

■ 3. Section 234.6 is revised to read as follows:

§ 234.6 Baggage-handling statistics.

(a) For air transportation taking place before January 1, 2018, each reporting carrier shall report monthly to the Department on a domestic system basis, excluding charter flights, the total number of passengers enplaned system-wide and the total number of mishandled-baggage reports filed with the carrier.

(b) For air transportation taking place on or after January 1, 2018, each reporting carrier shall report monthly to the Department on a domestic system basis, excluding charter flights:

(1) The total number of checked bags enplaned, including gate checked baggage, ''valet bags,'' interlined bags, and wheelchairs and scooters enplaned in the aircraft cargo compartment;

(2) The total number of wheelchairs and scooters that were enplaned in the aircraft cargo compartment;

(3) The number of mishandled checked bags, including gate-checked baggage, ''valet bags,'' interlined bags and wheelchairs and scooters that were enplaned in the aircraft cargo compartment; and

(4) The number of mishandled wheelchairs and scooters that were enplaned in the aircraft cargo compartment.

(c) The information in paragraphs (a) and (b) of this section shall be submitted to the Department within 15 days after the end of the month to which the information applies and must be submitted with the transmittal accompanying the data for on-time performance in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Information.

[FR Doc. 2016–26181 Filed 11–1–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 517, 584, and 585

RIN 3141–AA21, 3141–AA57

Various National Indian Gaming Commission Regulations

AGENCY: National Indian Gaming Commission.

ACTION: Correcting amendments.

SUMMARY: The National Indian Gaming Commission (NIGC) amends various regulations previously issued. The NIGC moved its headquarters and needs to update the address. The agency also revises two headings by shortening them.

DATES: Effective November 17, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Modrich-Alvarado, Staff Attorney, (202) 632–7003.

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or the Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law October 17, 1988. The Act established the NIGC and set out a comprehensive framework for the regulation of gaming on Indian lands. The purposes of the Act include: Providing a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; ensuring that the Indian tribe is the primary beneficiary of the gaming operation; and declaring that the establishment of independent federal regulatory authority for gaming on Indian lands, the establishment of federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue. 25 U.S.C. 2702.

II. Corrections

25 CFR Part 517—Freedom of Information Act Procedures

This document revises 25 CFR 517.2 to reflect the correct physical address. This document also amends 25 CFR 517.4(a) and 517.8(b)(2) to reflect the correct mailing address.

25 CFR Part 584—Appeals Before a Presiding Official

This document revises the heading of 25 CFR part 584.

25 CFR Part 585—Appeals to the Commission

This document revises the heading of 25 CFR part 585.

III. Certain Findings

Under the Administrative Procedure Act, a notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comments are impractical, unnecessary, or contrary to the public interest. Because the revisions here are technical in nature and intended solely to update the NIGC's current mailing address the NIGC is publishing a technical amendment.

IV. Regulatory Matters

Executive Order 13175

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published on July 15, 2013. Due to the ministerial nature of the action being taken here, consultation is not required under the NIGC's Consultation Policy.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities as defined by the

Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Indian tribes are not considered to be small entities for purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not result in an annual effect on the economy of $100 million per year or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions and does not have a significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission determined the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform Act

In accordance with Executive Order 12988, the Commission determined the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act

The Commission determined this rule does not constitute a major federal action significantly affecting the quality of the human environment and that a detailed statement is not required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) is required.

List of Subjects

25 CFR Part 517

Freedom of information.

25 CFR Part 584

Administrative practice and procedure, Gambling.

25 CFR Part 585

Administrative practice and procedure, Gambling, Indians—lands, Penalties.

For the reasons set forth in the preamble, the NIGC amends 25 CFR parts 517, 584, and 585 as follows:

PART 517—FREEDOM OF INFORMATION ACT PROCEDURES

■ 1. The authority citation for part 517 continues to read as follows:

Authority: 5 U.S.C. 552, as amended.

■ 2. Revise the first sentence of § 517.2 to read as follows:

§ 517.2 Public reading room.

Records that are required to be maintained by the Commission shall be available for public inspection and copying at 90 K Street NE., Suite 200, Washington, DC 20002. * * *

■ 3. Revise the first two sentences of § 517.4(a) to read as follows:

§ 517.4 Requirements for making requests.

(a) *How to make a FOIA request.* Requests for records made pursuant to the FOIA must be in writing. Requests should be sent to the National Indian Gaming Commission, Attn: FOIA Officer, C/O Department of Interior, 1849 C Street NW., Mailstop #1621, Washington, DC 20240. * * *

* * * * *

■ 4. Revise the last sentence in § 517.8(b)(2) to read as follows:

§ 517.8 Appeals.

* * * * *

(b) * * *

(2) * * * The appeal shall be addressed to the National Indian Gaming Commission, Attn: FOIA Appeals Officer, C/O Department of Interior, 1849 C Street NW., Mailstop #1621, Washington, DC 20240.

* * * * *

PART 584—APPEALS BEFORE A PRESIDING OFFICIAL

■ 5. The authority citation for part 584 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2711, 2712, 2713, 2715, 2717.

■ 6. Revise the heading of part 584 to read as set forth above.

PART 585—APPEALS TO THE COMMISSION

■ 7. The authority citation for part 585 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2711, 2712, 2713, 2715, 2717.

■ 8. Revise the heading of part 585 to read as set forth above.

Dated: October 17, 2016.

Jonodev O. Chaudhuri,

Chairman.

Kathryn Isom-Clause,

Vice Chair.

E. Sequoyah Simermeyer,

Associate Commissioner.

[FR Doc. 2016–26060 Filed 11–1–16; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD–2015–HA–0062]

RIN 0720–AB64

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/ TRICARE: Refills of Maintenance Medications Through Military Treatment Facility Pharmacies or National Mail Order Pharmacy Program

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule implements section 702 (c) of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 which states that beginning October 1, 2015, the pharmacy benefits program shall require eligible covered beneficiaries generally to refill non-generic prescription maintenance medications through military treatment facility pharmacies or the national mail-order pharmacy program. An interim final rule is in effect. Section 702(c) of the National Defense Authorization Act for Fiscal Year 2015 also terminates the TRICARE For Life Pilot Program on September 30, 2015. The TRICARE For Life Pilot Program described in section 716(f) of the National Defense Authorization Act for Fiscal Year 2013, was a pilot program which began in March 2014 requiring TRICARE For Life beneficiaries to refill non-generic prescription maintenance medications through military treatment facility pharmacies or the national mail-order pharmacy program. TRICARE for Life beneficiaries are those enrolled in the Medicare wraparound coverage option of the TRICARE program. This rule includes procedures to assist beneficiaries in transferring covered prescriptions to the mail order pharmacy program.

DATES: *Effective Date:* This rule is effective January 6, 2017.

FOR FURTHER INFORMATION CONTACT: Dr. George Jones, Jr., Chief, Pharmacy Operations Division, Defense Health Agency, telephone 703–681–2890.

SUPPLEMENTARY INFORMATION:

A. Executive Summary

1. Purpose

This final rule implements Section 702(c) of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 which states that beginning October 1, 2015, the pharmacy benefits program shall require eligible covered beneficiaries generally to refill non-generic prescription maintenance medications through military treatment facility pharmacies or the national mail-order pharmacy program. Eligible covered beneficiaries are defined in sections 1072(5) and 1086 of title 10, United States Code.

2. Summary of the Major Provisions of the Final Rule

TRICARE beneficiaries are generally required to obtain all prescription refills for select non-generic maintenance medications from the TRICARE mail order program (where beneficiary copayments are much lower than in retail pharmacies) or military treatment facilities (where there are no copayments). Covered maintenance medications are those prescribed for chronic, long-term conditions that are taken on a regular, recurring basis, but do not include medications to treat acute conditions. TRICARE will follow best commercial practices, including that beneficiaries will be notified of the new rules and mechanisms to allow them to receive adequate medication during their transition to mail for their refills. The statute and rule authorize a waiver of the mail order requirement based on patient needs and other appropriate circumstances.

3. Costs and Benefits

The effect of the statutory requirement, implemented by this rule, is to shift a volume of prescriptions from retail pharmacies to the mail order pharmacy program. This will produce savings to the Department of approximately $81 million per year and savings to beneficiaries of approximately $20 million per year in reduced copayments.

B. Background

In Fiscal Year 2014, 61 million prescriptions were filled for TRICARE beneficiaries through the TRICARE retail pharmacy benefit at a net cost of $5.1 billion to the government. On average, the government pays 32% less for brand name maintenance medication prescriptions filled in the mail order program or military treatment facility pharmacies than through the retail program. Not all prescriptions filled through the retail program are maintenance/chronic medications. However, there is potential for significant savings to the government by shifting a portion of TRICARE prescription refills to the mail order program or military treatment facility pharmacies. In addition, there will be significant savings to TRICARE beneficiaries who will receive up to a 90 day refill at no charge for generics in the mail order program compared to $10 copay for up to a 30 day in retail. The savings is even greater for brand-name prescriptions: $20 for up to 90 days in mail versus $24 for up to 30 days in retail, meaning that for a 90-day supply the copayment comparison is $20 in mail to $72 in retail. The non-formulary copayment amount is $49 for up to 90 days in mail non-formulary drugs are generally not available in retail.

C. Summary of the Final Rule

The final rule revises paragraph (r) to 32 CFR 199.21. This paragraph (r) establishes rules for the new program of refills of maintenance medications for TRICARE through the mail order pharmacy program. Paragraph (r)(1) requires that for covered non-generic maintenance medications, TRICARE beneficiaries are generally required to obtain their prescription refills through the national mail order pharmacy program or through military treatment facility pharmacies. TRICARE beneficiaries are defined in sections 1072(5) and 1086 of title 10, United States Code, including those enrolled in the Medicare wraparound coverage option of the TRICARE program.

Paragraph (r)(2) provides that the Director, Defense Health Agency will establish, maintain, and periodically revise and update a list of covered maintenance medications, which will be accessible through the TRICARE Pharmacy Program Web site and by telephone through the TRICARE Pharmacy Program Service Center. Each medication included on the list will be a medication prescribed for a chronic, long-term condition that is taken on a regular, recurring basis. It will be clinically appropriate and cost effective to dispense the medication from the mail order pharmacy. It will be available for an initial filling of a 30-day or less supply through retail pharmacies, and will be generally available at military treatment facility pharmacies for initial fill and refills. It will be available for refill through the national mail-order pharmacy.

Paragraph (r)(3) provides that a refill is a subsequent filling of an original prescription under the same prescription number or other authorization as the original prescription, or a new original prescription issued at or near the end date of an earlier prescription for the same medication for the same patient.

Paragraph (r)(4) provides that a waiver of the general requirement to obtain maintenance medication prescription refills from the mail order pharmacy or military treatment facility pharmacy will be granted in several circumstances. There is a case-by-case waiver to permit prescription maintenance medication refills at a retail pharmacy when necessary due to personal need or hardship, emergency, or other special circumstance, for example, for nursing home residents. This waiver is obtained through an administrative override request to the TRICARE pharmacy benefits manager under procedures established by the Director, Defense Health Agency.

Paragraph (r)(5) establishes procedures for the effective operation of the program. The Department will implement the program by utilizing best commercial practices to the extent practicable. An effective communication plan that includes efforts to educate beneficiaries in order to optimize participation and satisfaction will be implemented. Beneficiaries with active prescriptions for a medication on the maintenance medication list will be notified that their medication is covered under the program. Beneficiaries will be advised that they may receive up to two 30 day fills at retail while they transition their prescription to the mail order program. The beneficiary will be contacted after each of these two fills reminding the beneficiary that the prescription must be transferred to mail. Requests for a third fill at retail will be blocked and the beneficiary advised to call the pharmacy benefits manager (PBM) for assistance. The PBM will provide a toll free number to assist beneficiaries in transferring their prescriptions from retail to the mail order program. With the beneficiary's permission, the PBM will contact the physician or other health care provider who prescribed the medication to assist in transferring the prescription to the mail order program. In any case in which a beneficiary is required to obtain a maintenance medication prescription refill from the national mail-order pharmacy program and attempts instead

to refill such medications at a retail pharmacy, the PBM will also maintain the toll free number to assist the beneficiary. This assistance may include information on how to request a waiver or in taking any other appropriate action to meet the beneficiary's needs and to implement the program. The PBM will ensure that a pharmacist is available at all times through the toll-free telephone number to answer beneficiary questions or provide other appropriate assistance.

Paragraph (r)(6) provides that the program will remain in effect indefinitely with any adjustments or modifications required by law.

D. Summary of and Response to Public Comments

The interim final rule was published in the **Federal Register** (80 FR 46796) August 6, 2015, for a 60-day comment period. We received six comments on the interim final rule; four comments from individuals and two comments from professional associations. We appreciate these comments, which are summarized here, along with DoD's response.

Comment: One comment expressed concern regarding the possibilities of delays in the mail causing the patient to miss a day or more of their medication.

Response: The provisions of the TRICARE pharmacy contract permit beneficiaries to refill medications well in advance of the refill due date to allow for adequate shipping time. Additionally, this final rule provides for a case-by-case waiver to permit prescription maintenance medication refill at a retail pharmacy when necessary due to personal need or hardship, emergency, or special circumstance.

Comment: One commenter objected to the lack of clear communication from ESI by stating that conflicting messages are often given to a beneficiary who calls with a question, *i.e.* your medications has been shipped, your medication has not been shipped, etc. The same individual suggests that Prior Approvals for brand name products often get deleted from the system requiring the beneficiary to repeat the PA process.

Response: DoD acknowledges the commenter's concerns regarding contractor communication and Prior Approvals being deleted from the system, both of which are contract specific issues, and not part of the regulatory language. It should be noted that Prior Approvals may be time limited depending on the medication. DoD will consider the feedback for incorporation into future contractor customer service performance requirements.

Comment: One commenter inquired why Active Duty personnel are not required to participate in this mandatory program which appears to be targeting retirees. In addition, the individual suggested a blanket waiver be administered for retirees who live in remote areas with very limited MTF pharmacy access. A final concern asked if MTF staffing has been increased to accommodate the potential influx of retirees.

Response: This final rule conforms with the current statutory requirement of Section 702 in the fiscal year (FY) 2015 National Defense Authorization Act, requiring eligible covered beneficiaries generally to refill non-generic prescription maintenance medications through military treatment facility pharmacies or the national mail order program. Eligible covered beneficiaries are defined in Title 10, Section 1072(5) and does not include Active Duty service members. The statute and the rule designate military treatment facility (MTF) pharmacies or the mail order pharmacy program as the two options available to beneficiaries for obtaining refills of non-generic prescription maintenance medications. For those beneficiaries who live in remote areas with limited MTF access, the mail order pharmacy program is an ideal option saving both time and copayment expenses. Our experience and data from the TRICARE FOR LIFE maintenance medication pilot showed that there was sufficient capacity to accommodate the change, both at mail order and in the MTFs. Our data show that the overall impact on the MTF workload was very minimal, while majority of the prescriptions went to mail order. The movement of brand maintenance medications from retail to mail order actually saves beneficiaries out-of-pocket expenses in the form of reduced copays and up to a 90 day supply for less than the 30 day copay at retail. This provides a win-win scenario for the beneficiary and the government.

Comment: One commenter cited anecdotal evidence in Alabama that resulted in emergency room visits from ingesting mail order prescriptions that had been exposed to excessive heat. The commenter expressed concerns about proper temperature control of medications shipped through the mail and suggests the rule include a requirement that all medications must be kept within the FDA's recommended range of 59–86 degrees.

Response: The pharmacy contractor reviews all medications dispensed through the mail order pharmacy for unique shipping requirements, based on information from the manufacturer. For medications that are temperature-sensitive, special shipping procedures are followed. The temperature-sensitive medications are mailed via expedited overnight shipping or 2nd day air, at no cost to the beneficiary. Before certain medications are delivered, a scheduling call is made to the beneficiary to arrange a delivery time and date.

Comment: A professional association commented with a number of concerns: beneficiaries should continue to have choice, flexibility, and easy access to prescription medications; unnecessary waste resulting from auto-ship policies and the suggestion to implement policies to ensure mail order refills are approved and needed; DoD should conduct and publicize a beneficiary satisfaction survey at the end of each year; beneficiaries should be properly informed about the options to seek a waiver and clear instructions on how to obtain one; DoD should develop and make available a complete list of acute care meds.

Response: This final rule conforms with the current statutory requirement of Section 702 in the FY 2015 NDAA requiring eligible covered beneficiaries generally to refill non-generic prescription maintenance medications through military treatment facility pharmacies or the national mail order program. DoD believes it is being implemented successfully and without adverse effects on beneficiaries. Non-generic prescription maintenance medications subject to the program are listed at *www.health.mil/selectdruglist.* DoD has determined it unnecessary to have an additional list to specify acute care medications that are not subject to the program. DoD continues to monitor beneficiary satisfaction of the TRICARE pharmacy program.

Comment: A professional association commented with the following concerns: The rule should clearly indicate that covered maintenance medications include non-generic only; beneficiaries should have to consent to getting a refill rather than automatic shipping; mandatory mail results in a silo approach where the patient gets prescriptions from multiple sources resulting the lack of coordinated care; community pharmacists are often the sole source for medication and patient education and can only judge the patient's understand by in-person interactions; communications to beneficiaries regarding waivers should include complete information on how to obtain a waiver.

Response: Section 199.21(r)(1) has been amended to insert ''non-generic''

prior to ''covered medications''. Contractor requirements are not part of the regulatory language. In order to participate in the mail order auto-ship program, beneficiaries must consent to auto-ship enrollment but are not required to do so. Beneficiaries enrolled in the auto-ship program are notified prior to medication shipment.

E. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review''

Executive Order (E.O.) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined primarily as one that would result in an effect of $100 million or more in any one year. The DoD has examined the economic and policy implications of this final rule and based on the resulting analysis, the Office of Management and Budget has concluded that this is an economically significant regulatory action under the Executive Order. The program rule will produce savings to the Department of approximately $81M per year and savings to beneficiaries of approximately $20 million per year in reduced copayments. This rule results in a shift of workload from retail pharmacies to the mail order program. This workload shift is estimated to result in a net impact to retail pharmacy margins nationwide of $15.6 million in FY17 dollars. This rule has been designated an economically significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

Congressional Review Act, 5 U.S.C. 801, et seq.

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of $100 million or more or have certain other impacts. This final rule is not a major rule under the Congressional Review Act.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

This rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more (adjusted for inflation) in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule does not have a significant impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This final rule contains no new information collection requirements subject to the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3511).

Executive Order 13132, ''Federalism''

This final rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on the States; the relationship between the National Government and the States; or the distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Dental health, Fraud, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.21 is amended by revising paragraph (r) to read as follows:

§ 199.21 TRICARE Pharmacy Benefits Program.

* * * * *

(r) *Refills of maintenance medications for eligible covered beneficiaries through the mail order pharmacy program*—(1) *In general* Consistent with section 702 of the National Defense Authorization Act for Fiscal Year 2015, this paragraph requires that for non-generic covered maintenance medications, beneficiaries are generally required to obtain their prescription through the national mail-order pharmacy program or through military treatment facility pharmacies. For purposes of this paragraph, eligible covered beneficiaries are those defined under sections 1072 and 1086 of title 10, United States Code.

(2) *Medications covered.* The Director, DHA, will establish, maintain, and periodically revise and update a list of non-generic covered maintenance medications subject to the requirement of paragraph (r)(1) of this section. The current list will be accessible through the TRICARE Pharmacy Program Internet Web site and by telephone through the TRICARE Pharmacy Program Service Center. Each medication included on the list will meet the following requirements:

(i) It will be a medication prescribed for a chronic, long-term condition that is taken on a regular, recurring basis.

(ii) It will be clinically appropriate to dispense the medication from the mail order pharmacy.

(iii) It will be cost effective to dispense the medication from the mail order pharmacy.

(iv) It will be available for an initial filling of a 30-day or less supply through retail pharmacies.

(v) It will be generally available at military treatment facility pharmacies for initial fill and refills.

(vi) It will be available for refill through the national mail-order pharmacy program.

(3) *Refills covered.* For purposes of the program under paragraph (r)(1) of this section, a refill is:

(i) A subsequent filling of an original prescription under the same prescription number or other authorization as the original prescription; or

(ii) A new original prescription issued at or near the end date of an earlier prescription for the same medication for the same patient.

(4) *Waiver of requirement.* A waiver of the general requirement to obtain maintenance medication prescription refills from the mail order pharmacy or military treatment facility pharmacy will be granted in the following circumstances:

(i) There is a blanket waiver for prescription medications that are for acute care needs.

(ii) There is a blanket waiver for prescriptions covered by other health insurance.

(iii) There is a case-by-case waiver to permit prescription maintenance medication refills at a retail pharmacy when necessary due to personal need or hardship, emergency, or other special circumstance. This waiver is obtained through an administrative override request to the TRICARE pharmacy benefits manager under procedures established by the Director, DHA.

(5) *Procedures.* Under the program established by paragraph (r)(1) of this section, the Director, DHA will establish

procedures for the effective operation of the program. Among these procedures are the following:

(i) The Department will implement the program by utilizing best commercial practices to the extent practicable.

(ii) An effective communication plan that includes efforts to educate beneficiaries in order to optimize participation and satisfaction will be implemented.

(iii) Beneficiaries with active retail prescriptions for a medication on the maintenance medication list will be notified that their medication is included under the program. Beneficiaries will be advised that they may receive two 30 day fill at retail while they transition their prescription to the mail order program.

(iv) Requests for a third fill at retail will result in 100% patient cost shares and will be blocked from any TRICARE payments and the beneficiary advised to call the pharmacy benefits manager (PBM) for assistance.

(v) The PBM will provide a toll free number to assist beneficiaries in transferring their prescriptions from retail to the mail order program. With the beneficiary's permission, the PBM will contact the physician or other health care provider who prescribed the medication to assist in transferring the prescription to the mail order program.

(vi) In any case in which a beneficiary required under paragraph (r) of this section to obtain a maintenance medication prescription refill from national mail order pharmacy program and attempts instead to refill such medications at a retail pharmacy, the PBM will also maintain the toll free number to assist the beneficiary. This assistance may include information on how to request a waiver, consistent with paragraph (r)(4)(iii) of this section, or in taking any other appropriate action to meet the beneficiary's needs and to implement the program.

(vii) The PBM will ensure that a pharmacist is available at all times through the toll-free telephone number to answer beneficiary questions or provide other appropriate assistance.

(6) This program will remain in effect indefinitely with any adjustments or modifications required by law.

* * * * *

Dated: October 28, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–26432 Filed 11–1–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2016–0109; 4500030113]

RIN 1018–BB82

Endangered and Threatened Wildlife and Plants; Adding Ten Species and Updating Five Species on the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in accordance with the Endangered Species Act of 1973, as amended (Act), are amending the List of Endangered and Threatened Wildlife (List) by adding: three foreign coral species (*Cantharellus noumeae, Siderastrea glynni,* and *Tubastraea floreana*), dusky sea snake (*Aipysurus fuscus*), Banggai cardinalfish (*Pterapogon kauderni*), the Tanzanian distinct population segment (DPS) of African coelacanth (*Latimeria chalumnae*), Nassau grouper (*Epinephelus striatus*), and three angelshark species (*Squatina aculeata, S. oculata,* and *S. squatina*). We are also updating the entries for Puget Sound-Georgia Basin canary rockfish (*Sebastes pinniger*), Puget Sound-Georgia Basin yelloweye rockfish (*Sebastes ruberrimus*), lower Columbia River coho salmon (*Oncorhynchus kisutch*), and the Puget Sound steelhead (*Oncorhynchus mykiss*) to reflect the designation of critical habitat, and we are updating the entry for the North Atlantic right whale (*Eubalaena glacialis*) to reflect an applicable rule citation. These amendments are based on previously published determinations by the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration, Department of Commerce, which has jurisdiction for these species.

DATES: This rule is effective November 2, 2016. *Applicability date:* The three coral and dusky sea snake listings were applicable as of November 6, 2015. The Banggai cardinalfish listing was applicable as of February 19, 2016. The Tanzanian DPS of African coelacanth listing was applicable as of April 28, 2016. The Nassau grouper listing was applicable as of July 29, 2016. The three angelshark listings were applicable as of August 31, 2016. The critical habitat designations for the Puget Sound-Georgia Basin canary rockfish (*Sebastes pinniger*) and Puget Sound-Georgia Basin yelloweye rockfish (*Sebastes ruberrimus*) were applicable as of February 11, 2015. The critical habitat designations for the lower Columbia River coho salmon (*Oncorhynchus kisutch*) and the Puget Sound steelhead (*Oncorhynchus mykiss*) were applicable as of March 25, 2016. The applicable rule citation for the North Atlantic right whale (*Eubalaena glacialis*) was applicable as of December 6, 2013.

FOR FURTHER INFORMATION CONTACT: Sarah Quamme, Chief, Unified Listing Team, U.S. Fish and Wildlife Service, MS–ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; 703–358–1796.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Act (16 U.S.C. 1531 *et seq.*) and Reorganization Plan No. 4 of 1970 (35 FR 15627; October 6, 1970), NMFS has jurisdiction over the marine and anadromous taxa specified in this rule. Under section 4(a)(1) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. Under section 4(a)(3)(A)(i) of the Act, NMFS must designate any habitat of endangered or threatened species which is then considered to be critical habitat. NMFS makes these determinations and critical habitat designations via its rulemaking process. Under section 4(a)(2) of the Act, we, the Service, are then responsible for publishing final rules to amend the List in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.11(h).

On December 16, 2014, NMFS published a proposed rule (79 FR 74953) to list the dusky sea snake (*Aipysurus fuscus*) and three foreign corals (*Cantharellus noumeae, Siderastrea glynni,* and *Tubastraea floreana*) as endangered species, and the Banggai cardinalfish (*Pterapogon kauderni*) as a threatened species. NMFS solicited public comments on the proposed rule through February 17, 2015. On October 7, 2015, NMFS published a final rule (80 FR 60560) to list the dusky sea snake and the three foreign coral species as endangered species. On January 20, 2016, NMFS published a final rule (81 FR 3023) to list the Banggai cardinalfish as a threatened species.

The listing of the dusky sea snake and three foreign coral species was applicable as of November 6, 2015. The listing of the Banggai cardinalfish was applicable as of February 19, 2016. In the final rules for these species (dusky sea snake and three corals: 80 FR 60560;

Banggai cardinalfish: 81 FR 3023), NMFS addressed all public comments received in response to the proposed rule. By publishing this final rule, we are simply taking the necessary administrative step to codify these changes in the List at 50 CFR 17.11(h).

On March 3, 2015, NMFS published a proposed rule (80 FR 11363) to list the Tanzanian DPS of African coelacanth (*Latimeria chalumnae*) as a threatened species. NMFS solicited public comments on the proposed rule through May 4, 2015. NMFS addressed all public comments received in response to the proposed rule, and on March 29, 2016, NMFS published a final rule (81 FR 17398) to list the Tanzanian DPS of African coelacanth as a threatened species. The listing of the Tanzanian DPS of African coelacanth was applicable as of April 28, 2016. By publishing this final rule, we are simply taking the necessary administrative step to codify these changes in the List at 50 CFR 17.11(h).

On September 2, 2014, NMFS published a proposed rule (79 FR 51929) to list Nassau grouper (*Epinephelus striatus*) as a threatened species. NMFS solicited public comments on the proposed rule through December 31, 2014. NMFS addressed all public comments received in response to the proposed rule, and on June 29, 2016, NMFS published a final rule (81 FR 42268) to list Nassau grouper as a threatened species. The listing of Nassau grouper was applicable as of July 29, 2016. By publishing this final rule, we are simply taking the necessary administrative step to codify these changes in the List at 50 CFR 17.11(h).

On July 14, 2015, NMFS published a proposed rule (80 FR 40969) to list the sawback angelshark (*Squatina aculeata*), smoothback angelshark (*Squatina oculata*), and the common angelshark (*Squatina squatina*) as endangered species. NMFS solicited public comments on the proposed rule through September 14, 2015. NMFS addressed all public comments received in response to the proposed rule, and on August 1, 2016, NMFS published a final rule (81 FR 50394) to list these three angelshark species as endangered species. The listing of these three angelshark species was applicable as of August 31, 2016. By publishing this final rule, we are simply taking the necessary administrative step to codify these changes in the List at 50 CFR 17.11(h).

We are also updating the entries on the List for the Puget Sound-Georgia Basin canary rockfish (*Sebastes pinniger*), Puget Sound-Georgia Basin yelloweye rockfish (*Sebastes ruberrimus*), lower Columbia River coho salmon (*Oncorhynchus kisutch*), and the Puget Sound steelhead (*Oncorhynchus mykiss*) to reflect the final designation of critical habitat for these four species. On August 6, 2013, NMFS published a proposed rule (78 FR 47635) identifying critical habitat for the Puget Sound-Georgia Basin DPSs of yelloweye rockfish and canary rockfish. NMFS solicited public comments on the proposed rule through November 4, 2013. On November 13, 2014, NMFS published a final rule (79 FR 68042) designating critical habitat for these two rockfish species. On January 14, 2013, NMFS published a proposed rule (78 FR 2726) identifying critical habitat for the lower Columbia River coho salmon and Puget Sound steelhead. NMFS solicited public comments on the proposed rule through April 15, 2013. On February 24, 2016, NMFS published a final rule (81 FR 9252) designating critical habitat for these two species.

The designation of critical habitat for the Puget Sound-Georgia Basin rockfish DPSs was applicable as of February 11, 2015. The designation of critical habitat for the lower Columbia River coho salmon and Puget Sound steelhead was applicable as of March 25, 2016. In the respective final rules (79 FR 68042 and 81 FR 9252), NMFS addressed all public comments received in response to the proposed rules. By publishing this final rule, we are simply taking the necessary administrative step to codify these changes in the List at 50 CFR 17.11(h).

Finally, we are updating the entry on the List for the North Atlantic right whale (*Eubalaena glacialis*) to reflect the publication of a final rule eliminating the expiration date (or ''sunset clause'') contained in regulations at 50 CFR 224.105 requiring vessel speed restrictions to reduce the likelihood of lethal vessel collisions with North Atlantic right whales. NMFS published the proposed rule on June 6, 2013 (78 FR 34024), and solicited public comments through August 5, 2013. NMFS addressed all public comments received in response to the proposed rule. On December 9, 2013, NMFS published a final rule (78 FR 73726), followed by a correction to the final rule (79 FR 34245, June 16, 2014), removing the sunset clause. By publishing this final rule, we are simply taking the necessary administrative step to codify these changes in the List at 50 CFR 17.11(h).

The rulemaking actions discussed above are presented in Table 1. As mentioned above, in all cases, NMFS addressed the public comments received.

TABLE 1—RULEMAKING ACTIONS BY NMFS

Common name	Scientific name	Proposed rule publication date, action	Final rule publication date	Applicability date
Dusky sea snake	*Aipysurus fuscus*	December 16, 2014 (79 FR 74953), to list as endangered.	October 7, 2015 (80 FR 60560).	November 6, 2015.
Coral (no common name).	*Cantharellus noumeae*	December 16, 2014 (79 FR 74953), to list as endangered.	October 7, 2015 (80 FR 60560).	November 6, 2015.
Coral (no common name).	*Siderastrea glynni*	December 16, 2014 (79 FR 74953), to list as endangered.	October 7, 2015 (80 FR 60560).	November 6, 2015.
Coral (no common name).	*Tubastraea floreana* ...	December 16, 2014 (79 FR 74953), to list as endangered.	October 7, 2015 (80 FR 60560).	November 6, 2015.
Banggai cardinalfish	*Pterapogon kauderni*	December 16, 2014 (79 FR 74953), to list as threatened.	January 20, 2016 (81 FR 3023).	February 19, 2016.
African coelacanth (Tanzanian DPS).	*Latimeria chalumnae*	March 3, 2015 (80 FR 11363), to list as threatened.	March 29, 2016 (81 FR 17398).	April 28, 2016.
Nassau grouper	*Epinephelus striatus* ..	September 2, 2014 (79 FR 51929), to list as threatened.	June 29, 2016 (81 FR 42268).	July 29, 2016.
Sawback angelshark ...	*Squatina aculeata*	July 14, 2015 (80 FR 40969), to list as endangered.	August 1, 2016 (81 FR 50394).	August 31, 2016.
Smoothback angelshark.	*Squatina oculata*	July 14, 2015 (80 FR 40969), to list as endangered.	August 1, 2016 (81 FR 50394).	August 31, 2016.

TABLE 1—RULEMAKING ACTIONS BY NMFS—Continued

Common name	Scientific name	Proposed rule publication date, action	Final rule publication date	Applicability date
Common angelshark ...	*Squatina squatina*	July 14, 2015 (80 FR 40969), to list as endangered.	August 1, 2016 (81 FR 50394).	August 31, 2016.
Canary rockfish (Puget Sound-Georgia Basin DPS).	*Sebastes pinniger*	August 6, 2013 (78 FR 47635), to designate critical habitat.	November 13, 2014 (79 FR 68042).	February 11, 2015.
Yelloweye rockfish (Puget Sound-Georgia Basin DPS).	*Sebastes ruberrimus* ..	August 6, 2013 (78 FR 47635), to designate critical habitat.	November 13, 2014 (79 FR 68042).	February 11, 2015.
Coho salmon (lower Columbia River).	*Oncorhynchus kisutch*	January 14, 2013 (78 FR 2726), to designate critical habitat.	February 24, 2016 (81 FR 9252).	March 25, 2016.
Steelhead (Puget Sound DPS).	*Oncorhynchus mykiss*	January 14, 2013 (78 FR 2726), to designate critical habitat.	February 24, 2016 (81 FR 9252).	March 25, 2016.
North Atlantic right whale.	*Eubalaena glacialis*	June 6, 2013 (78 FR 34024), to eliminate the ''sunset clause''.	December 9, 2013 (78 FR 73726); correction to final rule on June 16, 2014 (79 FR 34245).	December 6, 2013.

Administrative Procedure Act

Because NMFS provided a public comment period on the proposed rules for these taxa, and because this action of the Service to amend the List in accordance with the determination by NMFS is nondiscretionary, the Service finds good cause that the notice and public comment procedures of 5 U.S.C. 553(b) are unnecessary for this action. We also find good cause under 5 U.S.C. 553(d)(3) to make this rule effective immediately. The NMFS rules extended protection under the Act to these species and listed them in 50 CFR parts 223 and 224 or designated critical habitat under 50 CFR part 226; this rule is an administrative action to amend the List at 50 CFR 17.11(h) to reflect that NMFS has completed final listing determinations or revisions, or final critical habitat determinations, for these species. The public would not be served by delaying the effective date of this rulemaking action.

Required Determinations

National Environmental Policy Act

We have determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We outlined our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, by:

■ a. Revising the entry for ''Whale, North Atlantic right'' under MAMMALS;

■ b. Adding an entry for ''Sea snake, dusky'' in alphabetical order under REPTILES;

■ c. Adding entries for ''Angelshark, common,'' ''Angelshark, sawback,'' ''Angelshark, smoothback,'' ''Cardinalfish, Banggai,'' ''Coelacanth, African [Tanzanian DPS],'' and ''Grouper, Nassau'' in alphabetical order under FISHES;

■ d. Revising the entries for ''Rockfish, canary [Puget Sound-Georgia Basin DPS],'' ''Rockfish, yelloweye [Puget Sound-Georgia Basin DPS],'' ''Salmon, coho [Lower Columbia River ESU],'' and ''Steelhead [Puget Sound DPS]'' under FISHES; and

■ e. Adding entries for ''Coral, (no common name)'' [*Cantharellus noumeae*], ''Coral, (no common name)'' [*Siderastrea glynni*], and ''Coral, (no common name)'' [*Tubastraea floreana*] in alphabetical order by scientific name under CORALS.

The revisions and additions read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
*	*	*	*	*
Whale, North Atlantic right.	*Eubalaena glacialis*	Wherever found	E	35 FR 8491; 6/2/1970, 73 FR 12024; 3/6/2008,[N] 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 224.103, 50 CFR 224.105, 50 CFR 226.203.[CH]
*	*	*	*	*
REPTILES				

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	* *	*	*	* *
Sea snake, dusky	*Aipysurus fuscus*	Wherever found	E	80 FR 60560; 10/7/2015.[N]
*	* *	*	*	* *
FISHES				
*	* *	*	*	* *
Angelshark, common	*Squatina squatina*	Wherever found	E	81 FR 50394; 8/1/2016.[N]
Angelshark, sawback	*Squatina aculeata*	Wherever found	E	81 FR 50394; 8/1/2016.[N]
Angelshark, smoothback	*Squatina oculata*	Wherever found	E	81 FR 50394; 8/1/2016.[N]
*	* *	*	*	* *
Cardinalfish, Banggai	*Pterapogon kauderni*	Wherever found	T	81 FR 3023; 1/20/2016.[N]
*	* *	*	*	* *
Coelacanth, African [Tanzanian DPS].	*Latimeria chalumnae*	Tanzanian DPS—see 50 CFR 223.102.	T	81 FR 17398;. 3/29/2016[N]
*	* *	*	*	* *
Grouper, Nassau	*Epinephelus striatus*	Wherever found	T	81 FR 42268; 6/29/2016.[N]
*	* *	*	*	* *
Rockfish, canary [Puget Sound-Georgia Basin DPS].	*Sebastes pinniger*	Puget Sound-Georgia Basin DPS—see 50 CFR 223.102.	T	75 FR 22276; 4/28/2010,[N] 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 226.224.[CH]
Rockfish, yelloweye [Puget Sound-Georgia Basin DPS].	*Sebastes ruberrimus*	Puget Sound-Georgia Basin DPS—see 50 CFR 223.102.	T	75 FR 22276; 4/28/2010,[N] 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 226.224.[CH]
*	* *	*	*	* *
Salmon, coho [Lower Columbia River ESU].	*Oncorhynchus kisutch*	Lower Columbia River ESU—see 50 CFR 223.102.	T	70 FR 37160; 6/28/2005,[N] 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203,[4d] 50 CFR 226.212.[CH]
*	* *	*	*	* *
Steelhead [Puget Sound DPS].	*Oncorhynchus mykiss*	Puget Sound DPS—see 50 CFR 223.102.	T	72 FR 26722; 5/11/2007,[N] 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203,[4d] 50 CFR 226.212.[CH]
*	* *	*	*	* *
CORALS				
*	* *	*	*	* *
Coral, (no common name).	*Cantharellus noumeae*	Wherever found	E	80 FR 60560; 10/7/2015. [N]
*	* *	*	*	* *
Coral, (no common name).	*Siderastrea glynni*	Wherever found	E	80 FR 60560; 10/7/2015. [N]
Coral, (no common name).	*Tubastraea floreana*	Wherever found	E	80 FR 60560; 10/7/2015. [N]
*	* *	*	*	* *

Dated: October 14, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–26241 Filed 11–1–16; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 81, No. 212
Wednesday, November 2, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 342, 343, and 357

[Docket No. RM17–1–000]

Revisions to Indexing Policies and Page 700 of FERC Form No. 6

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission seeks comment regarding potential modifications to its policies for evaluating oil pipeline indexed rate changes. The Commission also seeks comment regarding potential changes to FERC Form No. 6, page 700. The Commission invites all interested persons to submit comments in response to the proposals.

DATES: Initial Comments are due December 19, 2016, and Reply Comments are due January 31, 2017.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures section of this document.

FOR FURTHER INFORMATION CONTACT:

Adrianne Cook (Technical Information), Office of Energy Market Regulation, 888 First Street NE., Washington, DC 20426, (202) 502–8849

Monil Patel (Technical Information), Office of Energy Market Regulation, 888 First Street NE., Washington, DC 20426, (202) 502–8296

Andrew Knudsen (Legal Information), Office of the General Counsel, 888 First Street NE., Washington, DC 20426, (202) 502–6527

SUPPLEMENTARY INFORMATION:

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1. The Federal Energy Regulatory Commission (Commission) is considering modifications to its policies for evaluating oil pipeline index rate changes and to the data reporting requirements reflected in page 700 of Form No. 6. As discussed below, the Commission's index ratemaking methodology has become the predominant mechanism for adjusting oil pipeline rates under the Interstate Commerce Act (ICA). Therefore, ensuring that index rate increases do not cause pipeline revenues to unreasonably depart from oil pipeline costs, and that both the Commission and oil pipeline shippers have sufficient information to assess the relationship between oil pipeline rates and costs, is essential to the Commission's implementation of its statutory obligations under the ICA. In this Advance Notice of Proposed Rulemaking (ANOPR), the Commission is considering a series of reforms to improve the Commission's and shippers' ability to ensure that oil pipeline rates are just and reasonable.

2. This ANOPR is the result of the Commission's ongoing monitoring and evaluation of the relationship between oil pipeline costs and rates. In 2015, the Liquids Shippers Group,[1] Airlines for America,[2] and the National Propane Gas Association[3] (collectively, Joint Shippers) filed a petition for rulemaking seeking additional cost information on Form No. 6, page 700.[4] In July 2015, the Commission held a technical conference discussing this proposal, including the Joint Shippers' asserted need for greater insight into oil pipelines' costs and revenues to enable shippers to challenge oil pipeline rates that may be unjust and unreasonable.

3. In addition, the Commission recently completed the 2015 Five-Year Indexing Review proceeding, which involved an assessment of the relationship between the oil pipeline

[1] Liquids Shippers Group consists of the following crude oil or natural gas liquids producers: Anadarko Energy Services Company, Apache Corporation, Cenovus Energy Marketing Services Ltd., ConocoPhillips Company, Devon Gas Services LP, Encana Marketing (USA) Inc., Marathon Oil Company, Murphy Exploration and Production Company USA, Noble Energy Inc., Pioneer Natural Resources USA Inc., and Statoil Marketing and Trading (US) Inc.

[2] Airlines for America is a trade association representing cargo and passenger airlines, including Alaska Airlines, Inc., American Airlines Group (American Airlines and US Airways), Atlas Air, Inc., Delta Air Lines, Inc., Federal Express Corporation, Hawaiian Airlines, JetBlue Airways Corp., Southwest Airlines Co., United Continental Holdings, Inc., and United Parcel Service Co.

[3] The National Propane Gas Association is a national trade association of the propane industry with a membership of approximately 3,000 companies, including 38 affiliated state and regional associations representing members in all 50 states.

[4] Petition for Rulemaking, Docket No. RM15–19–000 (filed April 20, 2015) (Petition).

index and industry costs.[5] Although the five-year review process addressed the calculation of the index-level on an industry-wide basis, it did not address how individual oil pipelines may adjust their rates based on the approved index.

4. However, through the Commission's ongoing monitoring of how the index affects pipeline rates, the Commission has observed that some pipelines continue to obtain additional index rate increases despite reporting on Form No. 6, page 700 revenues that significantly exceed costs. The Commission's experience with index proceedings has also indicated that our standards for evaluating shipper objections to index filings could be strengthened and clarified, to both protect against excessive rate increases and, consistent with the streamlined and simplified methodology required by Congress,[6] minimize costly and time-consuming litigation regarding pipeline rates.

5. Accordingly, in this ANOPR, the Commission proposes reforms to its review of oil pipeline index rate filings and the reporting requirements for Form No. 6, page 700 to better fulfill its statutory obligations under the ICA. First, the Commission is considering a new policy that would deny proposed index increases if (a) a pipeline's Form No. 6, page 700 revenues exceed the page 700 total cost-of-service by 15 percent for both of the prior two years or (b) the proposed index increases exceed by 5 percent the annual cost changes reported on the pipeline's most recently filed page 700.

6. Second, in response to the Joint Shippers' Petition, the Commission is also considering applying these new reforms to costs more closely associated with the proposed indexed rate than the total company-wide costs and revenues presently reported by oil pipelines on page 700. Accordingly, the Commission is considering requiring pipelines to file supplemental page 700s for (a) crude pipelines and product pipelines, (b) non-contiguous systems, and (c) major pipeline systems. The Commission also seeks comments regarding a proposed requirement that pipelines report (a) information regarding the allocations used to prepare the supplemental page 700s, and (b) separate revenues for cost-based rates (*e.g.* indexing), non-cost-based rates (*e.g.* market-based rates or settlement rates), and other jurisdictional revenues (such as penalties).

[5] *Five Year Review of the Oil Pipeline Index,* 153 FERC ¶ 61,312 (2015).

[6] *See infra* P 8.

I. Background

7. The Commission regulates the rates, terms, and conditions that oil pipelines charge under the Interstate Commerce Act (ICA).[7] The ICA prohibits oil pipelines from charging rates that are ''unjust and unreasonable'' and permits shippers and the Commission to challenge both pre-existing and newly filed rates.[8]

8. In the Energy Policy Act of 1992 (EPAct 1992), Congress mandated that the Commission establish a simplified and generally applicable ratemaking methodology for oil pipelines and streamline procedures in oil pipeline rate proceedings.[9] In response to EPAct 1992's mandate, the Commission issued Order No. 561 creating the indexing methodology,[10] which allows oil pipelines to change their rates subject to certain ceiling levels as opposed to making cost-of-service filings to change those rates. These ceiling levels change every July 1 with an index based upon industry-wide cost changes.[11] Indexing serves as the Commission's primary oil pipeline ratemaking methodology. However, the Commission also permits oil pipelines to change their rates via (a) a traditional cost-of-service filing based upon a showing that a substantial divergence exists between the pipeline's indexed rates and the pipeline's costs, (b) market-based rates if the pipeline can demonstrate it lacks market power, and (c) settlement rates.[12]

9. At the same time it created the indexing methodology, the Commission added page 700 to Form No. 6 to serve as a preliminary screening tool to evaluate indexed rates.[13] Page 700 provides a simplified presentation of an oil pipeline's jurisdictional cost-of-service and revenues. In its present form, page 700 reflects only total company data and does not provide separate costs-of-service for different parts of a pipeline system.

10. Page 700 serves as the means for the Commission's initial evaluation of protests and complaints alleging that a pipeline's indexed rate change is ''substantially in excess'' of the pipeline's cost changes.[14] When a shipper files a protest against an oil pipeline's indexed rate change, the percentage comparison test has been used by the Commission to determine whether to investigate the indexed filing. The percentage comparison test compares (a) the change in the prior two years' total cost-of-service data reported on page 700 with (b) the proposed indexed rate change.[15] If the percentage comparison test differential is greater than 10 percent, the Commission has historically investigated the protested index filing via subsequent administrative law judge hearing procedures, and, depending upon the outcome of that investigation, may modify or reject the index rate change. If the differential is less than 10 percent, the Commission has generally exercised its discretion to accept the rate filing without an investigation.[16]

11. The Commission also relies upon page 700 as a preliminary screen to evaluate complaints against an indexed rate change. Whereas the percentage comparison test has served as the means for evaluating a protest to an index rate change, the Commission applies a wider range of factors to evaluate complaints.[17] These factors include the substantially exacerbate test that directs further investigation if (a) a pipeline is already ''substantially over-recovering'' and (b) the pipeline has filed an index increase that would ''substantially exacerbate'' that over-recovery. If a shipper provides reasonable grounds that a pipeline's index increase will substantially exacerbate an existing over-recovery, the Commission will set

[7] 49 App. U.S.C. 1 *et seq.* (1988).

[8] 49 App. U.S.C. 13(1), 15(1), and 15(7).

[9] Energy Policy Act of 1992, Public Law 102–486 Sec. 1803(b), 106 Stat. 3010 (Oct. 24, 1992).

[10] *Revisions to Oil Pipeline Regulations pursuant to Energy Policy Act of 1992,* Order No. 561, FERC Stats. & Regs, ¶ 30,985, at 30,940 (1993), *order on reh'g and clarification,* Order No. 561–A, FERC Stats. & Regs., ¶ 31,000 (1994), *aff'd sub nom. Ass'n of Oil Pipe Lines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996) (*AOPL*).

[11] Pursuant to the Commission's indexing methodology, oil pipelines change their rate ceiling levels effective every July 1 by ''multiplying the previous index year's ceiling level by the most recent index published by the Commission.'' 18 CFR 342.3(d)(1) (2016). Currently, the index level is based upon the Producer's Price Index for Finished Goods plus 1.23, which was based upon the relationship between PPI–FG and oil pipeline cost changes during the 2009–2014 period. The index level is reviewed every five-years. *See Five-Year Review of the Oil Pipeline Index,* 153 FERC ¶ 61,312 (2015).

[12] 18 CFR 342.4 (2016).

[13] *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines,* Order No. 571, FERC Stats. & Regs., ¶ 31,006 (1994), *order on reh'g and clarification,* Order No. 571–A, FERC Stats. & Regs., ¶ 31,012 (1994), *aff'd sub nom.* All jurisdictional pipelines are required to file page 700, including pipelines exempt from filing the full Form 6. 18 CFR 357.2(a)(2) and (a)(3) (2016).

[14] 18 CFR 343.2(c) (2016).

[15] *Calnev Pipe Line L.L.C.,* 130 FERC ¶ 61,082, at PP 10–11 (2010) (*Calnev*).

[16] *SFPP, L.P.,* 143 FERC ¶ 61,141, at P 6 (2013).

[17] *Calnev,* 130 FERC ¶ 61,082 at P 11. The Commission has explained that it will consider additional factors in a complaint because it has more time to evaluate complaints and the complainant must carry the burden of proof. *BP West Coast Products LLC* v. *SFPP, L.P.,* 122 FERC ¶ 61,141, at PP 6–7 (2007).

the matter for hearing before an administrative law judge.[18]

II. Indexing Policies

12. The Commission is contemplating changes to indexing policies for evaluating annual oil pipeline indexed filings. These changes would modify both the existing percentage comparison test and the substantially exacerbate test. Through these modifications, the Commission seeks to ensure that oil pipeline rates under the ICA are just and reasonable by reducing the likelihood that an oil pipeline's rates substantially deviate from its costs through the application of indexed rate increases. The Commission also is exploring whether and how such changes would further streamline and simplify its regulations consistent with the objectives of EPAct 1992.

13. Accordingly, the Commission is considering a two-part evaluation of index filings.[19] The Commission would use these tests to strengthen and clarify its evaluation of all indexed filings upon the filing of a protest or complaint or upon the Commission's own initiative.[20] The first part of the evaluation, the new ''exacerbate'' test, would deny any ceiling level increase or indexed rate increases for pipelines in which a pipeline's page 700 revenues exceed page 700 total costs by 15 percent for both of the prior two years. The second part of the evaluation, the new percentage comparison test, would deny a proposed increase to a pipeline's rate or ceiling level greater than 5 percent of the barrel-mile cost changes reported on page 700.[21] These tests would be used by the Commission to accept or reject oil pipeline indexed filings without, at least in most cases, establishing hearing procedures.[22]

14. The Commission anticipates that the new exacerbate test, which considers the relationship between an oil pipeline's revenues and its costs, will have several benefits. Under indexing, individual oil pipelines may change their rates based upon industry-wide cost changes.[23] When an oil pipeline's revenues significantly exceed costs, the pipeline still may seek and receive an additional rate increase that may further increase this gap. This is because, currently, the Commission does not typically consider the relationship between an oil pipeline's revenues and its costs when evaluating an indexed rate change. The exception, the existing substantially exacerbate test, only applies after the proposed rate increase becomes effective and a shipper files a complaint.

15. Through the new exacerbate test, shippers could raise objections to proposed rate increases when pipeline revenues already appreciably exceed costs. The contemplated 15 percent threshold is intended to preserve an indexing regime based upon industry-wide cost changes while also ensuring that the index does not cause a particular oil pipeline's rates to unreasonably depart from its costs. For example, an oil pipeline with costs corresponding to industry-wide averages and with revenues 115 percent of costs would earn a real return on equity (ROE) [24] that is appreciably higher than the real ROE the pipeline itself has identified on page 700.[25] Under these circumstances, it may be reasonable to deny additional index rate increases. However, to avoid distortions caused by one-year fluctuations in costs and revenue, the Commission only anticipates denying an index increase if the 15 percent threshold is exceeded for two consecutive years.

16. Similarly, the Commission also anticipates that the new percentage comparison test will help ensure that rates better reflect costs. By reducing the gap between an annual rate increase and a pipeline's cost changes from 10 to 5 percent, the Commission constrains the difference that can emerge in a one-year period between a pipeline's costs and its revenues.[26] However, as is the case with the existing percentage comparison test, if a pipeline's page 700 reported costs exceed its revenues, the Commission would permit the pipeline to take the full index increase because the pipeline is not recovering its costs.

17. The Commission is also considering requiring pipelines, whether or not they modify their indexed rates, to make an annual filing showing changes in their ceiling levels.[27] These ceiling levels would also be subject to challenge using the new exacerbate and percentage comparison tests. Applying these processes to the pipeline's rate ceilings, not just the rates, would limit the emergence of pipeline over-recoveries. Under the new exacerbate test, a pipeline's ceiling levels would not increase when its revenues exceed 115 percent of costs, ensuring that the pipeline would not be able to significantly raise its rates (and thus revenues) immediately after page 700 revenues fall below 115 percent of page 700 costs.[28] Likewise, by applying

[18] *BP West Coast Products LLC* v. *SFPP, L.P.,* 122 FERC ¶ 61,129 (2008).

[19] The Commission does not propose to change its policies for evaluating index rate decreases. If the index causes a pipeline's rate ceiling to decline, then the pipeline must adjust its rates so that they remain at or below the reduced rate ceiling. 18 CFR 342.3(e) (2016).

[20] Consistent with the policy articulated in Order No. 561, the Commission anticipates continued reliance upon affected shippers to bring challenges that apply the standards contemplated by this ANOPR to indexed rate changes. Order No. 561, FERC Stats. & Regs., ¶ 30,985 at 30,967. However, the Commission retains the authority to investigate on its own initiative oil pipeline rates, including indexed rates, under sections 13 and 15 of the ICA.

[21] The Commission currently uses costs, not costs per barrel-mile, when applying the percentage comparison test to oil pipeline cost changes. However, total cost levels can fluctuate due to changing throughput even if the expenses of moving a particular barrel remain the same. The Commission has concluded that cost per barrel-mile (Line 9/Line 12) may provide a more accurate measure of a pipeline's cost changes.

[22] In other words, if a pipeline's index filing satisfied both tests, it would generally be accepted. Likewise, if the index filing failed either the exacerbate test or the percentage comparison test, it would generally be rejected.

[23] Using an industry-wide index both simplifies the ratemaking procedures by avoiding consideration of a particular pipeline's costs and rewards efficient companies that control costs. ''Indexing fosters efficiency by severing the linkage under traditional cost-of-service ratemaking between . . . rate changes and . . . costs. This provides the pipeline with the incentive to cut costs aggressively, since . . . it may retain a portion of the savings it generates.'' *See* Order No. 561, FERC Stats. & Regs., ¶ 30,985 at 30,948 n.37.

[24] The real ROE is the nominal or total ROE less the inflationary component of ROE.

[25] When a pipeline reports revenues that are 115 percent of page 700 total cost-of-service, approximately one-third of these additional revenues represent income tax liabilities and the remaining two-thirds are additional equity earnings for the pipeline. Accordingly, for a hypothetical pipeline reporting the industry-wide average page 700 return on equity (page 700, line 7b) of approximately 18.3 percent of its total costs (page 700, line 9), the additional revenues would translate to an increase in equity return of 55 percent (*i.e.* ⅔ * 15 percent/18.3 percent). If the pipeline incorporated the industry-wide average ROE of 10.4 percent in its page 700 cost-of-service (page 700, line 6d), such a pipeline would actually be recovering a 16.1 percent real ROE (10.4 percent + 10.4 percent * 55 percent). The Commission calculated the industry-wide averages in this footnote based upon the publicly available page 700 data filed by oil pipelines.

[26] Using the 10 percent threshold, a pipeline with costs annually declining by 5 percent and 4.9 percent of annual indexed rate increases could have revenues that exceed costs by roughly 20 percent after two years and 30 percent after three years. Applying that same hypothetical but using the 5 percent threshold, the revenues would only exceed costs by 10 percent after two years and around 15 percent after three years.

[27] As explained, *supra* P 8, indexing allows oil pipelines to change their rates subject to certain ceiling levels. These ceiling levels change every July 1 with an index based upon industry-wide cost changes. When a pipeline's ceiling levels change, the pipeline is not currently obligated to make a filing with the Commission. Pipelines are currently only obligated to make a filing with the Commission if they change their rates pursuant to the changing ceiling levels.

[28] In other words, the change in the ceiling increase would be limited to a 5 percent difference from the pipeline's cost change. For example, if the index for 2018 is 3 percent, and the pipeline's cost

Continued

the new percentage comparison test to a pipeline's ceiling level changes (as well as to its indexed rate changes), the Commission also would limit the ability of a pipeline to carry-forward the full indexed increase to a future period when that increase significantly exceeds (*i.e.* more than 5 percent) the pipeline's cost changes.[29]

18. The Commission anticipates these tests can be used to simplify and streamline oil pipeline ratemaking procedures. While page 700 has been used as a ''preliminary screen,'' under the tests proposed here, the pipeline's own reported cost data on page 700 would serve as a sufficient basis for a decision to deny a challenged index rate filing. In such circumstances, a full hearing before an administrative law judge would not be necessary. By relying more upon the pipeline's self-reported page 700 data, the Commission could simplify and streamline the process for evaluating indexed rate changes. To the extent that commenters believe there may be circumstances in which the new exacerbate test and the revised percentage comparison tests when applied to page 700 (or the supplemental page 700s described below) would not provide a reasonable basis for accepting or rejecting an indexed filing, commenters should (a) identify those circumstances and (b) specifically discuss how those circumstances could be addressed for evaluating indexed rate changes in a simplified and streamlined ratemaking process.

19. Along similar lines, the Commission anticipates that these modifications would streamline and simplify Commission policies by establishing clearer standards. For example, under the new exacerbate test, the Commission would be identifying the specific threshold for what constitutes a ''substantial over-recovery.'' Further, when the Commission sets an indexed rate filing for hearing based upon either the percentage comparison test or the substantially exacerbate test, there is limited precedent providing guidance regarding the parameters and scope of such a hearing subject to a simplified ratemaking methodology.[30] This lack of clarity creates complexity and uncertainty for both shippers and pipelines. By accepting and rejecting indexed filings based upon the proposed new exacerbate and percentage comparison tests, the Commission seeks to establish a clearer policy consistent with the objective of a simplified and streamlined ratemaking process.

20. Whether relying upon the existing page 700 or the supplemental page 700s, the Commission expects that these new tests would serve as the primary mechanism for evaluating oil pipeline indexed rate changes.[31] The Commission anticipates that these new policies for evaluating indexed filings would both (a) ensure that index rate increases do not cause pipeline revenues to substantially deviate from costs and (b) streamline and simplify the Commission's ratemaking methodologies.

III. Modifications to Page 700

21. The Commission has preliminarily concluded that additional reporting requirements may enhance the ability of shippers and the Commission to monitor oil pipeline rates. First, the Commission is considering a requirement that pipelines file supplemental page 700s for (a) crude pipelines and product pipeline systems, (b) non-contiguous systems, and (c) certain major pipeline systems. These changes would complement the proposed new exacerbate and percentage comparison tests. Using the supplemental page 700s, the Commission could evaluate indexed rate changes based upon costs and revenues more closely related (and thus more relevant) to the proposed indexed rate change.[32]

22. Second, the Commission is considering requiring pipelines on page 700 and the supplemental page 700s to report additional information regarding (a) cost allocations used on the supplemental page 700s and (b) separate revenues for cost-based rates (*e.g.,* indexing), non-cost-based rates (*e.g.,* market-based rates), and other jurisdictional revenues (such as penalties).

A. Background

The Commission's reevaluation of page 700 originated with the Joint Shippers' petition for rulemaking. In the petition, the Joint Shippers requested that the Commission require pipelines to disaggregate the total company data reported on page 700 and to file supplemental page 700s with summary costs-of-service for (a) crude and product systems and (b) for each ''rate design'' segment. The Joint Shippers' proposal also requested that all interested parties be given access to the work papers used to prepare page 700. A technical conference held July 30, 2015, discussed the Joint Shippers' petition. The Commission provided the opportunity for initial comments due September 25, 2015 and reply comments due October 30, 2015. At the technical conference and in subsequent comments, the Association of Oil Pipelines (AOPL) opposed the proposal as unduly burdensome and inconsistent with the Commission's indexing ratemaking regime. In addition to the comments from AOPL the Commission also received nine separate initial comments from pipeline entities opposing the petition.[33] The Joint Commenters,[34] Liquids Shippers Group, the Canadian Association of Petroleum Producers,[35] and Tesoro Refining and Marketing LLC filed initial comments supporting the proposal. On October 30,

change is −3 percent, the pipeline's ceiling level could not increase by 3 percent because this would fail the percentage comparison test because 6 [3 − (−3)] is more than 5. Rather, in this hypothetical example, the ceiling level could only change by 2 percent [2 − (−3) = 5]. This 2 percent increase to the ceiling level would carry forward whether or not the pipeline raised its rates up to the ceiling.

[29] Currently, Commission policy allows a pipeline to file a partial index rate increase leading to a percentage comparison test of 9.9 percent while the pipeline's ceiling rate still increases by the full index. The pipeline can make a filing with the Commission to increase its rates up to the ceiling level in a subsequent year.

[30] Consistent with the intent of indexing to create a simplified ratemaking methodology, the investigation into an indexed rate increase should not require the parties to fully litigate a cost-of-service rate case.

[31] Because page 700 is critical to the Commission's ability to monitor oil pipeline rates, the Commission emphasizes that pipelines must comply with the current requirement to file the Form No. 6, including the page 700, by April 18 of each year. Although waivers may still be granted in limited circumstances, the Commission must be able to evaluate the indexed rates before they become effective on July 1 of each year. Failure to timely file the Form No. 6 could delay the effective date of a pipeline's proposed indexed increase or, potentially, lead to the outright rejection of the requested increase.

[32] Shippers could also use the supplemental page 700 as the basis for initiating a cost-of-service complaint against a pipeline's rates. Consistent with the mandate for a simplified ratemaking methodology in EPAct 1992, the Commission created indexing to avoid cost-of-service litigation. However, shippers may still pursue cost-of-service claims if a pipeline's indexed rates substantially diverged from a pipeline's costs. *Arco* v. *Calnev Pipe Line, L.L.C.,* 97 FERC ¶ 61,057, at 61,311 (2001) (citing Order No. 561, FERC Stats. & Regs., ¶ 30,985 at 30,955).

[33] The Commission received comments from Explorer Pipeline Company, Magellan Midstream Partners, L.P., Marathon Pipe Line LLC, Shell Pipeline Company LP, Plains Pipeline, L.P., SFPP, L.P., Buckeye Pipe Line Company, L.P., jointly NuStar Logistics, L.P. and NuStar Pipeline Operating Partnership, L.P., and, jointly, Enterprise Products Partners L.P. and its operating subsidiaries Enterprise TE Products Pipeline Company LLC and Mid-America Pipeline Company, LLC.

[34] Joint Commenters include Airlines for America, National Propane Gas Association, and Valero Marketing and Supply Company.

[35] The Canadian Association of Petroleum Producers represents companies that develop and produce natural gas and crude oil throughout Canada.

2015, AOPL and SFPP, L.P., filed reply comments expressing continued opposition to the petition and the Joint Commenters and the Liquids Shippers Group filed reply comments in further support of the petition.

23. In its reply comments, AOPL advanced a limited alternative proposal to the petition that would require pipelines to report carrier property data shown on Form No. 6, pages 212–213 and accrued depreciation data shown on Form No. 6, page 216 separately for crude oil and products.[36] Using this data, AOPL stated shippers could estimate costs by crude and products pipeline systems. In the supplemental reply comments filed November 23, 2015, Joint Commenters argued AOPL's counterproposal did not provide adequate information for shippers to meaningfully evaluate the reasonableness of rates.[37] On December 8, 2015, AOPL filed a response to the Joint Commenters Supplemental Reply Comments.

B. Supplemental Page 700s

1. Commission Proposal

24. The Commission's preliminary assessment indicates that providing supplemental page 700s for different parts of a pipeline system may enhance the Commission's and shippers' ability to evaluate a pipeline's indexed rates.

25. For some pipelines, the total company data on page 700 consolidates costs and revenues from several different assets, including (a) pipeline systems that move crude oil as opposed to petroleum products, (b) non-contiguous systems that use geographically separate assets, and (c) major pipeline systems that extend at least 250 miles and serve fundamentally different markets. The costs associated with providing service on one of these systems may be fundamentally different from the costs associated with providing service on other parts of the total company pipeline system. Accordingly, these supplemental page 700s would be useful both in the evaluation of index filings (as discussed above) and for cost-of-service challenges to oil pipeline rates. When a pipeline seeks an indexed increase to a particular rate, shippers and the Commission could use the supplemental page 700s to compare the rate change with costs that are more closely associated with that particular rate.

26. Accordingly, as discussed below, the Commission is considering requiring pipelines to file supplemental page 700s for crude oil systems (labeled 700c) and petroleum product systems (labeled 700p). Within each of these crude and product systems, the Commission is considering a further requirement that pipelines provide a supplemental page 700 for (a) non-contiguous (geographically separate) pipeline systems [38] and (b) major pipeline systems. Major pipeline systems would consist of large pipeline systems (at least over 250 miles) that serve markets (either origin or destination) different from the remainder of the pipeline's system.[39] Major pipeline systems would also include separate pipeline systems (even those below the 250-mile threshold) established by a final Commission order in a litigated rate case. The supplemental page 700s for non-contiguous and major pipeline systems would be labeled 700c1, 700c2, etc., for crude systems, and 700p1, 700p2, etc., for product systems.[40]

27. The Commission anticipates that these supplemental page 700s would allow index rate changes to be evaluated using data that is more relevant to a particular shipper's rates than the currently reported company-wide data. These criteria identify pipeline systems associated with (a) separate transportation movements and (b) costs due to the use of different assets.

28. The Commission expects that the benefits described above will outweigh the accounting burden for disaggregating the cost data on these supplemental page 700s. For crude and product systems, pipelines are already required to disaggregate significant data on the Form No. 6. For non-contiguous pipelines, geographically separate systems are also more likely to be recorded separately on a company's books and records.[41] Similarly, 250-mile major pipeline systems are likely to be of sufficient significance that the pipeline separately tracks the costs and revenues associated with such a large part of its business. Nonetheless, to the extent that a pipeline's existing books and records do not allow for the pipeline to directly assign certain costs that would be required to be reported on the supplemental page 700s, the Commission, as discussed below, is considering allowing for certain reasonable allocations and estimates using the available data.

29. The Commission does not presently intend to pursue additional segmentation of page 700, such as the ''rate design'' segments proposed in the Joint Shippers' petition. Indexing does not require an exact correlation between a pipeline's costs and rates,[42] and, given that regulatory scheme, we believe that the changes proposed above will provide sufficient transparency to allow the Commission and shippers to monitor pipelines' costs and revenues. The Commission has previously relied upon the total company costs reported on page 700, and we believe the more specific supplemental page 700s identified above will be appropriate to be used in future applications of the index.

30. Moreover, the Commission is concerned about the application of the Joint Shippers' proposal on an industry-wide basis. Most pipelines have never made a filing with the Commission identifying their rate design segments, and Commission precedent provides limited guidance for identifying rate design segments.[43] Rate design segmentation of page 700 would likely insert into the Commission's ''simplified'' indexing methodology complex, fact-specific disputes regarding the appropriate rate design

[36] AOPL Reply Comments, Docket No. RM15–19–000, at 60.

[37] Joint Commenters Supplemental Reply Comments, Docket No. RM15–19–000, at 18.

[38] For example, if one pipeline system goes from California to Nevada and another pipeline system goes from Texas to Arizona.

[39] A major pipeline system would include one branch of a ''V'' where different parts of the total company system share a similar origin but where one 250-mile system serves destinations to the northwest and another part travels to destinations to the northeast. Laterals, different divisions of an integrated and interconnected reticulated pipeline, different divisions of a straight-line pipeline, and granular rate segments are not intended to be a major pipeline system within the Commission's contemplated definition.

[40] By definition, if a pipeline has one major pipeline system labeled 700c1 which extends over 250 miles, it must also file a supplemental page 700c2 for the remainder of its crude system.

[41] Pipelines typically record their costs using cost centers and location codes. It seems reasonable that in most cases these data should be sufficiently precise to associate particular costs with the major pipeline system identified above.

[42] As the United States Court of Appeals for the District of Columbia Circuit has explained, requiring an individualized cost-of-service evaluation for each pipeline would be inconsistent with the simplification mandated by EPAct 1992. *AOPL* v. *FERC,* 281 F.3d 239, 244 (D.C. Cir. 2002). Indexing achieves simplification by using an industry-wide index as opposed to relying upon a detailed examination of each pipeline's particular costs. The Commission only considers a pipeline's particular cost changes if the index rate change is in ''substantial excess'' of the pipeline's costs or there is a substantial divergence between a pipeline's rates and the costs associated with those rates.

[43] A pipeline would only need to identify its rate design segments if it litigated a cost-of-service rate case. Because pipelines primarily use indexing to change their rates, such cost-of-service cases are rare. The Commission has only required one pipeline, SFPP, to use segmented data in a cost-of-service case. *SFPP, LP,* 86 FERC ¶ 61,022, at 61,080 (1999). There, the Commission made a series of fact-specific holdings to conclude that SFPP's south system consisted of two rate design segments, one travelling from Texas to Phoenix, Arizona, and another from California to Phoenix, Arizona.

segmentation.[44] Further, the Joint Shippers' alternate proposal to define rate design segments using definition 32(a) from the Uniform System of Accounts provides little clarity because this definition has historically served a separate accounting purpose and has never previously been applied to identify rate design segments.[45]

31. The comments filed in Docket No. RM15–19–000 demonstrate our concerns. As an initial matter, different shipper comments supporting the segmentation proposal identify conflicting lists of pipelines that ''could'' have different rate design segments.[46] Moreover, to identify these segments, the Joint Shippers used potentially inapplicable criteria such as ''undivided joint interest'' [47] and separate ''tariff listings'' [48] that, in addition to being potentially over-inclusive, failed to identify SFPP, L.P., a non-contiguous pipeline that has repeatedly been treated as operating separate segments in Commission rate cases.[49] In addition, the rate design segments identified by shippers include relatively insignificant assets, such as small laterals.[50] The burden associated with segmentation is not a one-time burden, as pipeline systems change over time and pipelines will need to re-evaluate their rate design segments in future years. Recent litigation before the Commission further demonstrates the burdens imposed by a fact-specific inquiry into a pipeline's segmentation.[51] Given the Commission's indexing ratemaking regime and our determination that alternative reforms to page 700 will provide sufficient transparency to assist the Commission and shippers, the Commission currently does not intend to pursue the Joint Shippers' proposed reporting requirement.

C. Additional Reporting Requirements on Page 700

32. The Commission is also considering requiring pipelines to report additional data on the page 700 and supplemental page 700s. First, in order to facilitate the creation of the supplemental page 700s above, the Commission is considering requiring pipelines to explain the allocation of costs between the different supplemental page 700s. Second, the Commission is considering requiring all pipelines to report separate revenues and throughput for cost-based transportation rates (resulting from indexing and cost-of-service), non-cost-based transportation rates (resulting from settlement rates and market-based rates), and other jurisdictional revenues (such as penalties).

1. Cost Allocation Data

33. The Commission is contemplating reporting requirements involving the cost allocation methodologies used to derive the system-specific data reported on the supplemental page 700s. As discussed below, the Commission recognizes pipeline arguments that it may be difficult or costly for pipelines to directly assign certain costs to the system-specific supplemental page 700s. Thus, the Commission is considering whether to permit pipelines to use reasonable methodologies for allocating those costs. However, to ensure transparency, the Commission is considering also requiring pipelines to provide information regarding these allocations on page 700. This information would allow the Commission and other interested parties to observe (a) how these allocations are affecting the supplemental page 700s' costs-of-service and (b) any changes in direct assignment or allocation practices between annual page 700 filings.[52]

34. Page 700 includes ratemaking information that, unlike typical accounting data, pipelines may not be able to cost-effectively determine on a segmented basis. For example, the Opinion No. 154–B trended original cost rate base [53] (page 700, line 5d) includes (a) the original cost of the rate base (page 700, line 5a), (b) a Starting Rate Base Write-Up developed in 1983 to transition from a prior ratemaking methodology to trended original cost ratemaking (page 700, line 5b), and (c) Net Deferred Earnings, which consists of

[44] How a pipeline defines its segments could fundamentally affect which rates are eligible for an indexed increase based upon the supplemental page 700s.

[45] Rather, this definition applies to the accounting rules for treatment of the purchase and sale of an asset. Specifically, based upon definition 32(a), the sale or disposal of a ''segment of a business'' must be accounted for as part of ''discontinued operations'' and not included among the gains and losses associated with pipeline's continuing operations. *See* 18 CFR pt. 352, Instruction 1–6(c) and Account No. 676 (2016) (''Gain (loss) on disposal of discontinued segments''). The Commission's considerations when applying this accounting definition may differ significantly from considerations used to identify separate segments in a rate case.

[46] *Compare* Tesoro Refining and Marketing LLC Initial Comment, Docket No. RM15–19–000, Appendix *with* Joint Shippers Initial Comment, Docket No. RM15–19–000, at 38–39; Attachment 2, Affidavit of Michael R. Tolleth, Docket No. RM15–19–000, at 9 & Liquid Shippers Group Initial Comments, Docket No. RM15–19–000, at 30.

[47] The Joint Shippers state that undivided joint interests pipelines indicate the existence of separate rate design segments because these systems ''generally have tariffs for each of the owners and may be geographically disconnected from other segments.'' Joint Shippers Initial Comment, Attachment 2, Affidavit of Michael R. Tolleth, Docket No. RM15–19–000, at 12. However, because pipelines can structure their own tariffs, it is not clear whether merely having a separate tariff justifies a separate rate design system. Moreover, it is not clear that undivided joint systems are necessarily geographically separate. For example, the ''Maumee System'' is a crude oil pipeline that runs from Lima, OH, and to Samaria, MI. Mid-Valley Pipeline Company (Mid-Valley) and Hardin Street Holdings (Hardin) jointly own the ''Maumee System.'' Including Maumee, Mid-Valley's System extends continuously from northeast Texas to Samaria, Michigan, with receipts a several points on the southern portion of its system and delivery points all along its system, including four points on the Maumee System. In any event, to the extent an undivided joint interest pipeline is geographically separate, it would be addressed by the Commission's definition above.

[48] Oil pipelines have discretion with the structuring of their tariff, and how the tariff is structured does not necessarily establish whether or not separate rate design segments exist.

[49] *See* Affidavit of Michael R. Tolleth, Figure 1, Docket No. RM15–19–000, page 9.

[50] The shippers' proposal exempts pipelines that report total company revenues less than $10 million for each of the three previous years. However, it does not address small segments within larger total systems. For instance, the shippers' filings identify a 12-mile lateral on the Seminole pipeline as potentially requiring a separate page 700. *Compare* AOPL Reply Comments, Docket No. RM15–19–000, at 26–27 *with* Joint Shippers Supplemental Reply Comments, Docket No. RM15–19–000, at 8–9.

[51] These disputes have involved issues very specific to the operations of a particular pipeline system, such as (a) whether a pipeline, which was effectively a single pipe moving from the Gulf of Mexico to the northeastern United States, should be divided into two separate rate design systems (Joint Shippers Initial Comment, Attachment 1, Affidavit of Daniel S. Arthur, Docket No. RM15–19–000, at 28 and Appendix O) (discussing TE Enterprise Products, Docket No. IS12–203–000); (b) whether a pipeline's extension into Long Island, NY, should be treated separately from its much larger Eastern System on the basis of the different product moved, different pipeline vintages, different operational requirements and other factors (Joint Shippers Initial Comment, Attachment 1, Affidavit of Daniel S. Arthur, Docket No. RM15–19–000, Appendix E at 2) (discussing Buckeye Pipeline, Docket No. OR12–28–000); and (c) although not objecting to the segmentation in that particular case, questioning whether one of a pipeline's three systems should be divided further to account for different lines that move different products and serve different shippers (National Propane Group, et al, Initial Brief, Docket Nos. IS05–216–000, et al., at 13–14 (filed February 7, 2008) (discussing Mid-America Pipeline Company, LLC's Northern System). The oil pipeline cost-of-service cases involving rate design segmentation disputes have generally settled before the Commission issues a precedential order. However, they illustrate the burden that would be imposed by requiring every pipeline that files a page 700 to assess its system in this manner.

[52] As provided by the current instructions on page 700, a pipeline must explain any change in its application of the Opinion No. 154–B cost-of-service methodology from the prior year.

[53] The Commission's cost-of-service methodology was established in Opinion No. 154–B. *Williams Pipe Line Co.,* Opinion No. 154–B, 31 FERC ¶ 61,377, *order on reh'g,* Opinion No. 154–C, 33 FERC ¶ 61,327 (1985). When the Commission established indexing and page 700, the Commission determined that it would continue to use the Opinion No. 154–B methodology to measure pipeline costs for evaluating whether a pipeline's indexed rate changes were in substantial excess of the pipeline's rate changes.

the accumulations since 1983 of the inflationary component of a pipeline's annual return (page 700, line 5c).[54] Unlike typical accounting data, absent a cost-of-service rate case (which most oil pipelines have not experienced since 1983), a pipeline may have had no reason to maintain or calculate this data other than on the company-wide basis for page 700. Given that an exact accounting of the Starting Rate Base Write-Up and Deferred Earnings would require data from 1983 to the present,[55] obtaining this data may be impracticable.

35. Accordingly, to the extent the Opinion No. 154–B rate base information is not available in company records, the Commission would permit pipelines to perform a one-time allocation of these costs for preparing the supplemental page 700s. Reasonable allocations of this data should not significantly reduce the usefulness of the supplemental page 700 data. The Deferred Earnings and Starting Rate Base Write-Up are a relatively small part of an overall cost-of-service,[56] and thus reasonable allocations should not undermine the overall accuracy of the total cost-of-service that is used for evaluating indexed rates. Moreover, once this one-time allocation of these Opinion No. 154–B rate base costs establishes a base-line, future allocations should be limited.[57]

36. The Commission would also permit other allocations where appropriate. Currently, when the pipeline's business records do not allow direct cost assignment, pipelines filing page 700s use Commission-approved cost allocation methodologies for (a) allocating parent company overhead to the pipeline filing page 700 and (b) identifying the jurisdictional costs reported on page 700 as opposed to the non-jurisdictional costs. To the extent necessary, the pipelines may use reasonable methodologies for allocating costs [58] between the various systems reported on the proposed supplemental page 700s. The Commission anticipates that these methodologies will generally stay consistent over time. However, the Commission recognizes that, in some circumstances, it may be appropriate for a pipeline to further refine its allocation methodologies. The Commission also does not expect pipelines to make major or high cost modifications to accounting systems or business processes solely for the purpose of filing the supplemental page 700s.

37. The Commission, however, also seeks to ensure transparency regarding the costs allocated among the supplemental page 700s. The choice and application of cost allocation methodologies involves judgment that, to some degree, may be subjective.[59] The Commission and the public would also benefit from information regarding the amount of costs that pipelines are allocating as opposed to directly assigning. In order to ensure transparency and to monitor pipeline's allocation decisions, the Commission is considering requiring additional information on page 700 in order to differentiate between directly assigned and allocated costs and to briefly describe the allocation methodology.

38. Thus, for certain line items on page 700 oil pipelines would be required to report (a) directly assigned costs and (b) allocated costs.[60] The directly assigned costs would be those costs that have been assigned to a specific system based upon cost centers and location codes. For the allocated costs, the pipeline would include a footnote explaining the methodology used to allocate those costs, including (a) Kansas-Nebraska methodology, (b) volumetric method, (c) gross plant, or (d) other methodologies.[61]

39. Second, in order to facilitate understanding of these allocations, on both page 700 and the supplemental page 700s, the Commission is considering requiring additional data involving rate base.[62] Specifically, this approach would add to line 5a, Rate Base—original cost; line 5a1—Total Carrier Property In Service (Gross Plant); line 5a2—Net Carrier Property In Service (Net Plant); line 5a3—ADIT; and line 5a4—Total Working Capital. Gross and net plant could be important for understanding how costs are being allocated. For example, this data may provide a means for allocating the Opinion No. 154–B cost data.

40. By permitting oil pipelines to use estimates and cost allocations for certain costs, the Commission would seek to reduce the compliance costs associated with the supplemental page 700s. However, the use of allocations would be balanced by the additional reporting requirements that would enable the Commission and shippers to monitor both the level of allocated costs and, in general terms, how those costs were allocated.

2. Revenue, Barrel and Barrel Mile Data

41. The Commission is also considering requiring pipelines to disaggregate page 700 revenue, barrel, and barrel-mile data associated with (a) cost-based rates (resulting from indexing and cost-of-service), (b) non-cost-based rates (resulting from settlement rates

[54] Under the Opinion No. 154–B trended original cost ratemaking, the inflationary component of the nominal return is placed in deferred earnings and recovered as a part of rate base in future years. *See* Opinion No. 154–B, 31 FERC ¶ 61,377. *See, e.g., BP West Coast Prods., LLC* v. *FERC,* 374 F.3d 1263, 1282–83 (D.C. Cir. 2004).

[55] To properly allocate Starting Rate Base Write-Up, data may be needed dating back to the initial service date of the asset in question.

[56] The Commission evaluated the role of deferred earnings as a percentage of the cost of service for each pipeline filing a 2015 page 700. The Commission calculated the percentage of deferred earnings of the total cost-of-service as follows:

Deferred Earnings = Accumulated Net Deferred Earnings, line 5c * Real Cost of Stockholders' Equity, line 6d

Taxes on Deferred Earnings = Accumulated Net Deferred Earnings, line 5c * Adjusted Capital Structure Ratio for Stockholders' Equity, line 6b * Real Cost of

Stockholders' Equity, line 6d * (Composite Tax Rate, line 8a/(1-Composite Tax Rate, line 8a))

Deferred Earnings as a Percent of Cost of Service = (Deferred Earnings + Taxes on Deferred Earnings)/ Total Cost of Service, line 9.

Using this formula, deferred earnings accounted for 6.71 percent of the median pipeline's cost of service, 3.29 percent for the pipeline at the 25th percentile and 9.44 percent for the pipeline at the 75th percentile. The industry-wide mean was 6.71 percent. Because the starting rate base write-up (line 5b) has been depreciated since 1984, it is either fully depreciated or quite small on most pipelines.

[57] In other words, once a pipeline establishes the base-line net deferred earnings for each of its supplemental page 700s, the pipeline can in subsequent years (a) amortize the base-line level established for each supplemental page 700 and (b) add future deferred earnings to the appropriate supplemental page 700. There may, however, be some further adjustments needed if a pipeline subsequently sells or acquires pre-existing assets which have accrued deferred earnings.

[58] These allocated costs could include items such as shared assets, shared services, and overhead costs where direct assignment may sometimes be very difficult.

[59] The Commission has established allocation methodologies that are used for ratemaking purposes. These include the Massachusetts Formula, the Kansas-Nebraska methodology, and volumetric allocations.

[60] The requirement to break-out directly assigned and allocated costs would be added to line 1 (Operating and Maintenance Expenses), line 2 (Depreciation Expense), line 3 (AFUDC Depreciation), line 4 (Amortization of Deferred Earnings), and *proposed lines* 5a1–5a4 (Trended Original Cost Rate Base). This requirement would apply to all supplemental page 700s.

[61] For example, on page 700c for crude pipeline systems, below line 1 ''Operating and Maintenance Expenses,'' this proposal would add Line 1a ''Directly Assigned O&M Expenses,'' and line 1b ''Allocated O&M Expenses.'' In a footnote, the pipeline could explain, ''These costs were allocated using the KN Method.''

[62] This information would be used primarily to understand the cost allocations to the different systems as reported on the supplemental page 700s. Although the Commission does not anticipate that all pipelines would be required to file the supplemental page 700s, the Commission is considering requiring all pipelines to report this information on page 700. The data would help the Commission understand a pipeline's capital costs, and this company-wide data should already be contained within the work papers used to prepare the page 700.

and market-based rates), and (c) other jurisdictional revenues (such as penalties).

42. When page 700 was created following EPAct 1992, most oil pipeline revenues resulted from rates subject to cost-based regulation. Therefore, comparing total revenue to total costs served as an effective preliminary means to determine whether to challenge a pipeline's cost-based rates. However, in recent years, an increasing percentage of pipelines are using settlement rates (including negotiated rates associated with new construction). Also, at the same time the Commission created page 700, the Commission formalized its market-based rates policy in Order No. 572.[63] The revenue derived from these non-cost-based rates may substantially deviate from a pipeline's cost-of-service, but still be just and reasonable.[64]

43. Separating the cost-based and non-cost-based revenue could help the Commission and pipeline shippers to assess, on a preliminary basis, whether a gap between total company costs and revenues likely results from cost-based rates (which could be challenged on a cost-of-service basis) or from non-cost-based rates (which could not be challenged on a cost basis). Also, because a pipeline must know the rate to charge a shipper seeking service, this revenue data should be relatively simple for the pipeline to identify and to track.

44. Certain limitations apply to this data. Different revenue sources may apply to different parts of the pipeline with different costs.[65] As a result of this mismatch, the Commission does not intend to use the disaggregated cost-based revenues in the indexing screens described above. However, this additional information would nonetheless enable the Commission and the industry to evaluate the relative effect of the Commission's different ratemaking methodologies. It could also provide an initial assessment for shippers contemplating a cost-of-service complaint against a pipeline's rates.[66]

3. Work Papers

45. Based on our consideration of the record in Docket No. RM15–19, and our proposed revisions to page 700 included in this ANOPR, we do not propose requiring pipelines to make the work papers used to prepare page 700 available to all interested parties as requested by the Joint Shippers' petition.

46. As described earlier in the ANOPR, the Commission is proposing to significantly revise pipeline reporting requirements for page 700. Page 700 data filed by the pipelines is under oath and subject to Commission audit. The current data on page 700 allows a shipper to compare (a) a pipeline's revenues to its total cost-of-service and (b) changes to a pipeline's total cost-of-service. Under both the Commission's current policy and the policy changes proposed above, this is the data directly used to evaluate challenged index filings. Page 700 also provides significant context for these total costs, including several major cost-of-service subcomponents. By requiring additional information on page 700 and the supplemental page 700s regarding (a) rate base (proposed lines 5a1–5a4), (b) the cost allocations, and (c) revenues, the Commission is providing additional context for the data on page 700.[67] We believe that this additional information provides sufficient information to allow the Commission and shippers to evaluate index findings and conduct a preliminary evaluation of a pipeline's rates prior to bringing a cost-of-service challenge. However, we invite comments on the sufficiency of this additional information in evaluating index filings and conducting preliminary evaluations of a pipeline's rates prior to bringing a cost-of-service challenge.

47. In support of their proposal, the Joint Shippers emphasize that the Commission currently has access to pipeline work papers. While true, we believe that, on balance, mandating disclosure of work papers is not necessary to provide shippers with sufficient information when considering challenges to pipelines' proposed or existing rates. In particular, we note that the dissemination of this data to shippers raises potential confidentiality concerns that do not exist when the Commission reviews the work papers. These issues include (a) shipper information protected by section 15(13) of the ICA, which prohibits disclosure of an individual shipper's movements and (b) the pipeline's competitive business information. On balance, we find that the general disclosure of this information, even subject to confidentiality agreements, is not appropriate at this time.

IV. Burden

48. The Commission invites commenters to also address the potential cost of the proposals being considered in this ANOPR. Comments could include an estimate of both the one-time implementation costs and the ongoing compliance costs. The Commission will provide a burden estimate in any future notice of proposed rulemaking.

V. Comment Procedures

49. The Commission invites interested persons to submit comments on the matters and issues presented in this notice to be adopted. Initial comments are due December 19, 2016 and reply comments are due January 31, 2017. Comments must refer to Docket No. RM17–1–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

50. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

51. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission,

[63] Prior to Order No. 572, the Commission allowed market-based rates on an experimental basis. *See Buckeye Pipe Line Co.,* 53 FERC ¶ 61,473 (1990), *order on reh'g,* 55 FERC ¶ 61,084 (1991).

[64] *Seaway Crude Pipeline Company LLC,* Opinion No. 546, 154 FERC ¶ 61,070, at P 47 (2016). ''(T)here is extensive precedent that supports the Commission's policy that negotiated rates need not be cost-based, and that a pipeline's entire portfolio of rates can produce revenues that exceed its overall cost-of-service.''

[65] For example, a negotiated rate could apply to the newer part of the pipeline system for which the rate base has not depreciated. In contrast, the cost-based rates may apply to older, legacy parts of the system in which the rate base has depreciated.

[66] As an example, consider a pipeline that ships 100,000 barrels system-wide, where 50,000 barrels are shipped under an indexed rate of $1.00 ($50,000), 25,000 barrels are shipped under a negotiated discount rate of $0.90 (for revenues of $22,500), and 25,000 are shipped at a market-based rate of $2.00 ($50,000). Also assume a total cost-of-service of $100,000. Under the existing requirements of page 700, the pipeline would list total revenues of $122,500 (50,000 + 22,500 + 50,000), producing a deviation between cost and revenue of $22,500 or 22.5 percent. If this pipeline instead reported segmented revenue, it would report $50,000 in cost-based revenue and $72,500 in non-cost-based rate revenue. The pipeline would also report throughput of 50,000 cost-based barrels, and 50,000 non-cost-based barrels. Comparing cost-based revenue to cost-based throughput, there would be no deviation between cost-based costs ($50,000) and cost-based revenues ($50,000).

[67] These additions comport to Dr. Arthur's statements in his testimony pointing out that ''two additional significant areas where page 700 work papers provide relevant information not reported elsewhere in the Form 6 are the allocation factors used to derive the cost-of-service and the treatment of other non-trunkline revenue, both of which can have significant influence on a resulting cost-of-service and revenues.'' See Joint Shippers Initial Comments, Arthur Affidavit, Docket No. RM15–19–000, at PP 6–7.

Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

52. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VI. Document Availability

53. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

54. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

55. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Issued: October 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26227 Filed 11–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2016–N–2938]

Reference Amount Customarily Consumed for Flavored Nut Butter Spreads and Products That Can Be Used To Fill Cupcakes and Other Desserts, in the Labeling of Human Food Products; Request for Information and Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of request for comments.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the establishment of a docket to receive comments, particularly data and other information, on the appropriate reference amount customarily consumed (RACC) and product category for flavored nut butter spreads (*e.g.,* cocoa, cookie, and coffee flavored), and products that can be used to fill cupcakes and other desserts, such as cakes and pastries. We are taking this action in part because we have recently issued a final rule updating certain RACCs, and we have also received a citizen petition asking that we either issue a guidance recognizing that ''nut cocoa-based spreads'' fall within the ''Honey, jams, jellies, fruit butter, molasses'' category for purposes of RACC determination; or amend the regulation to establish a new RACC category for ''nut cocoa-based spreads'' with an RACC of 1 tablespoon (tbsp.). We also are taking this action in response to a request to amend our serving size regulations to establish an RACC and product category for cupcake filling.

DATES: Comments must be received on or before January 3, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–N–2938 for ''Reference Amount Customarily Consumed for Flavored Nut Butter Spreads (*e.g.,* cocoa, cookie, and coffee flavored), and Products That Can Be Used To Fill Cupcakes and Other Desserts, in the Labeling of Human Food Products; Request for Information and Comments.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both

copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Cherisa Henderson, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1450.

SUPPLEMENTARY INFORMATION:

I. Background

A. Flavored Nut Butter Spreads (e.g., cocoa, cookie, and coffee flavored)

Under section 403(q)(1)(A)(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 343(q)(1)(A)(i)), food that is intended for human consumption and offered for sale must bear nutrition information that provides a serving size that reflects the amount of food customarily consumed (*i.e.,* the RACC) and is expressed in a common household measure that is appropriate to the food (unless an exception applies). We established RACCs for specific product categories in a final rule that appeared in the **Federal Register** on January 6, 1993, entitled ''Food Labeling; Serving Sizes'' (58 FR 2229, ''1993 final rule''). In the 1993 final rule, FDA provided nine general principles and factors for establishing RACCs in 21 CFR 101.12(a) to ensure that foods that have similar dietary usage, product characteristics, and customarily consumed amounts have a uniform reference amount.

The 1993 final rule included a reference (Ref. 1) to a memorandum to the file entitled ''List of products for each product category,'' which listed ''Nutella'' as an example of a product in the product category ''Other dessert toppings, *e.g.,* fruits, syrups, spreads, marshmallow cream, nuts, dairy and non-dairy whipped toppings'' (see 58 FR 2229 at 2268). The conclusion that ''Nutella'' belongs in the ''Other dessert toppings, *e.g.,* fruits, syrups, spreads, marshmallow cream, nuts, dairy and non-dairy whipped toppings'' category with an RACC of two tbsp. was based on a consumer survey conducted in 1991 that showed a significant number of respondents used ''Nutella'' as a dessert topping, particularly for ice cream.

In the **Federal Register** of March 3, 2014, we published a proposed rule entitled, ''Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed at One-Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments'' (79 FR 11990, ''2014 proposed rule''). The 2014 proposed rule proposed to update and modify certain RACCs for previously established product categories and establish RACCs for new products and product categories. The 2014 proposed rule provided no specific discussion with respect to ''Nutella.'' After publication of the proposed rule, on March 4, 2014, we received a citizen petition that requested we either: (1) Issue guidance recognizing that ''nut cocoa-based spreads'' fall within the ''Honey, jams, jellies, fruit butter, molasses'' category for purposes of RACC determination or (2) amend § 101.12 to establish a new product category for ''nut cocoa-based spreads'' with an RACC of one tbsp. (Docket No. FDA–2014–P–0263.) Based on the information provided, which included data pertaining specifically to ''Nutella,'' we understand that the petition intended ''Nutella'' to be incorporated into a category described as ''nut cocoa-based spreads.'' The petitioner submitted results of a consumer usage survey that the petitioner had commissioned through a marketing research firm. The survey included 722 mothers who purchased ''Nutella'' in the past 3 months. The survey found that, on average, 74 percent of ''Nutella'' use was associated with spreading the product on bread, including toast and in making sandwiches, and that two percent of use was as a topping for ice cream. The petition also included the results of an analysis of the National Health and Nutrition Examination Survey (NHANES) 2003–2010 consumption data for individuals aged 4 years or older (n = 43). The reported mean, median, and mode consumption amounts from this analysis for ''Nutella,'' including similar products used as chocolate-flavored hazelnut spreads, were 22.6 grams (g) (about 1 tbsp.), 18 g (1 tbsp.), and 18 g (1 tbsp.), respectively.

On March 10, 2016, we received a comment in response to the 2014 proposed rule in which a report prepared by a scientific consulting firm analyzed the NHANES data from 2003 through 2012 among participants aged 1 year and older for ''Nutella'' and other similar products used as chocolate-flavored hazelnut spreads (n = 92) (Ref. 2). The comment stated that the results showed that the mean, median, and mode consumption amounts were 28.6 g, 18 g (about 1 tbsp.), and 12 g, respectively. The comment included a report of an online survey designed to estimate the amount of ''Nutella'' typically consumed in an eating occasion. The comment asserted that the survey was administered to a representative sample of the U.S. population aged 18 to 80 years, with an average age of 27.3 years. Four hundred and thirty respondents consumed ''Nutella'' in the year before the survey was administered, and these respondents reported 824 eating occasions. Based on the categorical consumption amount selections weighted by the frequency of such amount consumed, the comment concluded that median consumption per eating occasion was 18.5 g (about 1 tbsp.), that the mean consumption per eating occasion was 32.6 g, and that almost half of the eating occasions (46.9 percent) involved using the product as a spread with bread or toast, as compared to use with crackers or cookies (17.2 percent), use by itself (13.9 percent), use as a spread for fruit (10.8 percent), use as a spread over pancakes or waffles (8.2 percent), and other uses (3 percent). The report concluded that the median consumption amount from both analyses was one tbsp., consistent with the RACC of one tbsp. that we had established for sweet spreads for bread such as honey, jams, and jellies.

Following the receipt of the citizen petition and comment, in the **Federal Register** of May 27, 2016, we published a final rule entitled, ''Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments'' (81 FR 34000) (''2016 final rule''). The 2016 final rule updated and modified certain

RACCs for previously established product categories and established RACCs for new products and product categories. The preamble to the 2016 final rule explained in the response to the comment on nut cocoa-based spreads that the primary usage of hazelnut spread, which was a reference to nut cocoa-based spreads such as ''Nutella'' discussed in the comment, is as a spread for bread instead of as a dessert topping (81 FR 34000 at 34029 to 34030). However, with respect to specific assertions raised in the March 10, 2016, comment, we responded that, while we recognize a need for an RACC for hazelnut spread outside of the dessert product category,'' and agreed that the primary usage of hazelnut spread is as a spread for bread instead of as a dessert topping because the proposed rule was silent about an RACC for hazelnut spread, and because we intended to provide the opportunity for public comment on this specific issue, we intended to consider whether to move hazelnut spread to a different appropriate product category in a future rulemaking'' (81 FR 34000 at 34029). This notification of request for comments represents the first step of our evaluation of the appropriate RACC and product category for flavored nut butter spreads (*e.g.,* cocoa, cookie, and coffee flavored), which we consider to include ''nut cocoa-based spread'' as described in the citizen petition and comment to the 2014 proposed rule.

B. Products Used as a Filling for Cupcakes and Other Desserts

In response to the 2014 proposed rule, one comment requested that we establish an RACC for icing intended for use as cupcake filling. In the preamble to the 2016 final rule, we said that we recognize a need for an RACC for this specific food product as well as for other types of cake or pastry fillings,'' but we further explained that, because the proposed rule was silent about an RACC for cupcake filling, and because we intended to provide the opportunity for public comment on this specific issue, we intend to establish an RACC for this product category in future rulemaking'' (81 FR 34000 at 34029). This notification of request for comments represents the first step of our evaluation of the appropriate RACC and product category for products used as a filling for cupcakes and other desserts.

II. Other Issues for Consideration

We invite interested persons to comment on the appropriate RACC and product category for flavored nut butter spreads (*e.g.,* cocoa, cookie, and coffee flavored), and products used as fillings for cupcakes and other desserts, such as cakes and pastries. In responding to the specific questions identified in this notice, please provide additional data and information that you believe we should consider. Please thoroughly explain your reasoning and provide data and other information to support your comments and responses to these questions. If you submit data, please also provide information regarding the type of survey or study conducted, research methodology, sampling frame, results of statistical analyses, and any other information needed to interpret the data.

We are particularly interested in responses to the following questions:

- What additional data and information are available to determine the customary consumption amounts of and appropriate product category for flavored nut butter spreads (*e.g.,* cocoa, cookie, and coffee flavored)?
- What is the major intended use of flavored nut butter spreads (*e.g.,* cocoa, cookie, and coffee flavored)?
- What other products on the market, if any, are similar to flavored nut butter spreads (*e.g.,* cocoa, cookie, and coffee flavored)? What product characteristics make these products similar? What dietary usage makes these products similar? Which product categories do flavored nut butter spreads (*e.g.,* cocoa, cookie, and coffee flavored) compete with or take market share and volume from? What data and information are available regarding the customary consumption amounts and product category for these similar products?
- What additional data and information are available regarding the customary consumption amounts and product category of products used as fillings for cupcakes and other desserts, such as cakes and pastries?
- What is the major intended use of fillings for cupcakes and other desserts, such as cakes and pastries?
- What other products on the market, if any, are similar to cupcake filling, such as cakes and pastries fillings? What product characteristics make these products similar? What dietary usage makes these products similar? Which product categories do fillings for cupcakes and other desserts, such as cakes and pastries, compete with or take market share and volume from? What data and information are available regarding the customary consumption amounts and product category for these similar products?

III. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov.*

1. Park, Y., Memorandum to the File, List of Products for Each Product Category, October 8, 1992.

2. Ferrero Inc., Comment to the Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed at One-Eating Occasion; Dual Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Proposed Rule. August 1, 2014.

Dated: October 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26407 Filed 11–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 221

[Docket ID: DOD–2015–OS–0054]

RIN 0790–AJ36

DoD Identity Management

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), DoD.

ACTION: Proposed rule.

SUMMARY: This rulemaking establishes implementation guidelines for DS Logon to provide a secure means of authentication to applications containing personally identifiable information (PII) and personal health information (PHI). This will allow beneficiaries and other individuals with a continuing affiliation with DoD to update pay or health-care information in a secure environment. This service can be accessed by active duty, National Guard and Reserve, and Commissioned Corps members of the uniformed services when separating from active duty or from the uniformed service.

DATES: Comments must be received by January 3, 2017.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive,

Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eves, Defense Human Resources Activity, 571–372–1956.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule describes procedures for obtaining a DS Logon credential for all active duty, National Guard and Reserve, and Commissioned Corps members of the uniformed services when separating from active duty or from the uniformed service. It discusses how credential holders may maintain and update their credentials and manage their personal settings. Finally, it discusses the permissions credential holders have to access their information, who has access to view and edit their information, and who is eligible to act on their behalf.

DoD collects and maintains information on Service members, beneficiaries, DoD employees, and other individuals affiliated with the DoD in order to issue DoD identification (ID) cards that facilitate access to DoD benefits, DoD installations, and DoD information systems. This action formally establishes DoD policy requirements for DoD Self-Service (DS) Logon credentials that are used to facilitate logical access to self-service Web sites. This regulatory action will update the CFR for DoD Manual (DoDM) 1341.02, volume 1, ''DoD Identity Management: DoD Self-Service (DS) Logon Program and Credential.

Authorities

The DoD PIP Program uses emerging technologies to support the protection of individual identity and to assist with safeguarding DoD physical assets, networks, and systems from unauthorized access based on fraudulent or fraudulently obtained credentials. DEERS is the authoritative data source for identity and verification of affiliation with the DoD in accordance with the DoD PIP Program. Specific authorities are listed below.

- Title 10 U.S.C. 1044a. This section establishes the authority for a Judge Advocate, other member of the armed forces, designated by law and regulations, or other eligible persons to have the powers to act as a notary. The persons identified in Title 10 U.S.C. 1044a subsection (b) have the general power of a notary and may notarize a completed and signed DD Form 3005, ''Application for Surrogate Association for DoD Self-Service (DS) Logon.''
- DoD Instruction 1000.25, ''DoD Personnel Identity Protection (PIP) Program'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/100025p.pdf*). This issuance establishes minimum acceptable criteria for the establishment and confirmation of personal identity and for the issuance of DoD personnel identity verification credentials.
- DoD Instruction 1341.2, ''Defense Enrollment Eligibility Reporting System (DEERS) Procedures'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/134102p.pdf*). This issuance establishes DEERS as the authoritative data source for identity and verification of affiliation with the DoD, and benefit eligibility to include medical, dental, and pharmacy.
- Office of Management and Budget M–04–04, ''E-Authentication Guidance for Federal Agencies'' (available at *www.whitehouse.gov/sites/default/files/omb/memoranda/fy04/m04-04.pdf*). This memorandum requires agencies to review new and existing electronic transactions to ensure that authentication processes provide the appropriate level of assurance, establishing and describing four levels of identity assurance for electronic transactions requiring authentication.
- 32 CFR part 310. This CFR part established the DoD Privacy Program in accordance with the provisions of the Privacy Act of 1974, and prescribes uniform procedures for the implementation of and compliance with the DoD Privacy Program.

Costs and Benefits of This Regulatory Action

The annual operating costs for the DS Logon program are approximately $1,265,305.35. Based on 6 million active users, the cost per user is about $0.21. The benefits include extending a secure means of authentication to PII and PHI to all DoD beneficiaries and other individuals with a continuing affiliation with DoD who previously had no logical access. Only one DS Logon credential may exist for an individual eliminating separate username/password combinations for each application to be accessed, allowing users to better manage their means of authentication to DoD information systems. The DS Logon credentials are credentialed at National Institute of Standards and Technology (NIST) e-authentication levels 1, 2, and 3, in accordance with NIST Special Publication 800–63–2 (available at: *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63-2.pdf*), and at Credential Strength A and B, in accordance with DoDI 8520.03 (available at: *http://www.dtic.mil/whs/directives/corres/pdf/852003.pdf,* meeting the required sensitivity level for access to self-service personal information.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the proposed rule has been reviewed by the Office of Management and Budget (OMB).

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This proposed rule would not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Department of Defense certifies that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial

number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

Section 221.6(d)(2)(i)(A) of this proposed rule contains information collection requirements. DoD has submitted the following proposal to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Title: Application for Surrogate Association for DoD Self-Service (DS) Logon.

Type of Request: New.

Number of Respondents: 5,000.

Responses per Respondent: 1.

Annual Responses: 5,000.

Average Burden per Response: 2 minutes.

Annual Burden Hours: 167 hours.

Needs and Uses: This information collection is consistent with Department of Defense (DoD) guidelines that have been outlined in draft DoD Manual (DoDM) 1341.02, volume 1, ''DoD Identity Management: DoD Self-Service (DS) Logon Program and Credential,'' which authorizes Defense Enrollment Eligibility Reporting System (DEERS) enrollment and DS Logon credential issuance to surrogates. A surrogate may be established as the custodian of a deceased Service member's unmarried minor child(ren) who is under 18, who is at least 18 but under 23 and attending school full-time, or who is incapacitated. A surrogate may also be established as the agent of an incapacitated dependent (*e.g.,* spouse, parent) or of a wounded, ill, or incapacitated Service member.

This information collection is needed to obtain the necessary data to establish eligibility for a DS Logon credential and enrollment in DEERS.

This information shall be used to establish an individual's eligibility for DEERS enrollment and DS Logon credential issuance as a surrogate. Once this information has been collected, a record will be established in DEERS and a DS Logon credential issued in accordance with DoDM 1341.02, volume 1. The information that is collected may be released to Federal and State agencies and private entities, on matters relating to utilization review, professional quality assurance, program integrity, civil and criminal litigation, and access to Federal government facilities, computer systems, networks, and controlled areas.

Affected Public: 5,000.

Frequency: On occasion.

Respondent's Obligation: Required to obtain DEERS enrollment and a DS Logon credential as a surrogate.

OMB Desk Officer: Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Jasmeet Seehra at *Oira_submission@omb.eop.gov,* with a copy to the Defense Human Resources Activity, Suite 06J25, 4800 Mark Center Drive, Alexandria, Virginia 22350–4000. Comments can be received from 30 to 60 days after the date of publication of this proposed rule, but comments to OMB will be most useful if received by OMB within 30 days after the date of publication of this proposed rule.

You may also submit comments, identified by docket number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, Suite 06J25, 4800 Mark Center Drive, Alexandria, Virginia 22350–4000; Mr. Robert Eves; 571–372–1956.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 221

Identity management, Identification cards, Logon credentials.

■ Accordingly, 32 CFR part 221 is proposed to be added to read as follows:

PART 221—DOD IDENTITY MANAGEMENT

Sec.

221.1 Purpose.
221.2 Applicability.
221.3 Definitions.
221.4 Policy.
221.5 Responsibilities.
221.6 Procedures.

Authority: 10 U.S.C. 1044a.

§ 221.1 Purpose.

(a) The purpose of the overall part is to implement policy, assign responsibilities, and provide procedures for DoD personnel identification.

(b) This part establishes implementation guidelines for DS Logon.

§ 221.2 Applicability.

This part applies to:

(a) The Office of the Secretary, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as the ''DoD Components'').

(b) The Commissioned Corps of the U.S. Public Health Service (USPHS), under agreement with the Department of Health and Human Services, and the National Oceanic and Atmospheric Administration (NOAA), under agreement with the Department of Commerce.

§ 221.3 Definitions.

Unless otherwise noted, the following terms and their definitions are for the purposes of this part:

Beneficiary. Individuals affiliated with the DoD that may be eligible for benefits or entitlements.

Certified copy. A copy of a document that is certified as a true original and:

(1) Conveys the appropriate seal or markings of the issuer;

(2) Has a means to validate the authenticity of the document by a reference or source number;

(3) Is a notarized legal document or other document approved by a judge advocate, member of any of the armed forces, or other eligible person in accordance with 10 U.S.C. 1044a; or

(4) Has the appropriate certificate of authentication by a U.S. Consular Officer in the foreign country of issuance which attests to the authenticity of the signature and seal.

DoD beneficiary (DB). Beneficiaries who qualify for DoD benefits or entitlements in accordance with National Institute of Science and Technology Special Publication 800–63–2, ''Electronic Authentication Guideline'' (available at *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63-2.pdf*). This population may include widows, widowers, and eligible former spouses.

Dependent. An individual whose relationship to the sponsor leads to entitlement to benefits and privileges.

DS Logon credential. A username and password to allow Service members, beneficiaries, and other individuals affiliated with the DoD secure access to self-service Web sites.

DS Logon credential holder. A Service member, beneficiary, and other individual affiliated with the DoD who has applied for and received a DS Logon credential.

Former member. An individual who is eligible for, or entitled to, retired pay for non-regular service in accordance with 31 U.S.C. chapter 1223, but who has been discharged from the Service and who maintains no military affiliation.

Former spouse. An individual who was married to a uniformed services member for at least 20 years, and the member had at least 20 years of service creditable toward retirement, and the marriage overlapped as follows:

(1) Twenty years marriage, 20 years creditable service for retirement, and 20 years overlap between the marriage and the service (referred to as 20/20/20). The benefits eligibility begins on the date of divorce;

(2) Twenty years marriage, 20 years creditable service for retirement, and 15 years overlap between the marriage and the service (referred to as 20/20/15). The benefits eligibility begins on the date of divorce; or

(3) A spouse whose marriage was terminated from a uniformed service member who has their eligibility to receive retired pay terminated as a result of misconduct based on Service-documented abuse of the spouse and has 10 years of marriage, 20 years of creditable service for retirement, 10 years of overlap between the marriage and the service (referred to as 10/20/10). The benefits eligibility begins on the date of divorce.

Legal guardian (LG). The terms ''guardian'' and ''conservator'' are used synonymously. Some States may limit the authority of a guardian to specific types of health care decisions; a court may also impose limitations on the health care decisions.

Surrogate. A person who has been delegated authority, either by an eligible individual who is at least 18 years of age and mentally competent to consent or by a court of competent jurisdiction in the United States (or possession of the United States), to act on behalf of the eligible individual in a specific role.

Widow. The female spouse of a deceased member of the uniformed services.

Widower. The male spouse of a deceased member of the uniformed services.

§ 221.4 Policy.

In accordance with DoD Directive 1000.25, ''DoD Personnel Identity Protection (PIP) Program'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/100025p.pdf*), DoD Instruction 1341.2, ''Defense Enrollment Eligibility Reporting System (DEERS) Procedures'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/134102p.pdf*), Office of Management and Budget M–04–04, ''E-Authentication Guidance for Federal Agencies'' (available at *www.whitehouse.gov/sites/default/files/omb/memoranda/fy04/m04-04.pdf*) and 32 CFR part 310, it is DoD policy that DoD will provide a secure means of authentication to PII and personal health information (PHI) for all beneficiaries and other individuals with a continuing affiliation with DoD.

§ 221.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) oversees implementation of the procedures within this part.

(b) Under the authority, direction, and control of the USD(P&R), and in addition to the responsibilities in paragraph (c) of this section, the Director, DoDHRA, through the Director, DMDC:

(1) Approves the addition or elimination of population categories for DS Logon eligibility.

(2) Develops and fields the required Defense Enrollment Eligibility Reporting System (DEERS) and RAPIDS infrastructure and all elements of field support required to support the management of the DS Logon credential including, but not limited to, issuance, storage, maintenance, and customer service.

(3) Obtains and distributes DS Logon credentials, and provides a secure means for delivery.

(c) The DoD Component heads:

(1) Comply with this part and distribute this guidance to applicable stakeholders.

(2) Provide manpower for issuance of DS Logon credentials and instruction for use to all eligible individuals who are requesting a DS Logon credential in conjunction with the issuance of a DoD identification (ID) card or who are applying for a DS Logon credential as a surrogate, when responsible for a DoD ID card site(s).

(d) The Secretaries of the Military Departments, in addition to the responsibilities in paragraph (c) of this section, and the heads of the non-DoD uniformed services:

(1) Comply with this part and distribute this guidance to applicable stakeholders.

(2) Provide manpower for issuance of DS Logon credentials and instruction for use to all eligible individuals who are requesting a DS Logon credential in conjunction with the issuance of a DoD ID card or who are applying for a DS Logon credential as a surrogate.

(3) Ensure all Active Duty, National Guard and Reserve, and Commissioned Corps members of their uniformed services obtain a DS Logon credential when separating from active duty or from the uniformed service.

§ 221.6 Procedures.

(a) *General.* A DS Logon credential will be made available to all beneficiaries that are eligible for DoD-related benefits or entitlements to facilitate secure authentication to critical Web sites. This includes members of the uniformed services, veterans with a continuing affiliation to the DoD, spouses, dependent children aged 18 and over, and other eligible individuals identified in paragraph (b) of this section.

(b) *Overview.* Only one DS Logon credential may exist for an individual, regardless of the number of affiliations an individual may have to the DoD.

(1) *Eligibility.* Beneficiaries of DoD-related benefits or entitlements and other individuals with a continuing affiliation with the DoD may be eligible for a DS Logon credential. Eligible populations include:

(i) Veterans, including former members, retirees, Medal of Honor recipients, disabled American veterans, and other veterans with a continuing affiliation to the DoD.

(ii) Retired DoD civilian employees, including retired NOAA Wage Mariners.

(iii) Eligible dependents in accordance with volume 2 of DoD Manual 1000.13, ''DoD Identification (ID) Cards: Benefits for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/100013_vol2.pdf*), including spouses, dependent children aged 18 or older, and dependent parents.

(iv) DBs, including eligible widows, widowers, and former spouses, in accordance with volume 2 of DoD Manual 1000.13.

(v) Surrogates, as described in paragraph (d) of this section.

(vi) Other populations as determined by the Director, DMDC.

(c) *Lifecycle*—(1) *Application.* Eligible individuals, as identified in paragraph (b)(1) of this section, may apply for a DS Logon credential:

(i) *Online.* Individuals with Internet access may apply for a sponsor or dependent DS Logon by submitting a:

(A) *My Access Center Web site request.* This type of request supports the provisioning of a Basic DS Logon credential. The My Access Center Web site can be accessed at *https://myaccess.dmdc.osd.mil/.*

(B) *CAC request.* Individuals with a CAC, a computer with Internet access and a CAC reader may apply for either a sponsor or a dependent DS Logon credential via the My Access Center Web site or any application that has implemented DS Logon.

(*1*) A sponsor DS Logon credential is provisioned immediately upon request. This type of request supports the provisioning of a Premium DS Logon credential.

(*2*) A request for a DS Logon credential on behalf of a dependent generates an activation letter with an activation code that is mailed to the sponsor at his or her home address in DEERS. Once complete, this type of request supports the provisioning of a Premium DS Logon credential.

(C) *Request using a Defense Finance and Accounting Services (DFAS) myPay account.* Eligible individuals may apply for a sponsor or dependent DS Logon credential using a DFAS myPay personal identification number via the My Access Center Web site. A request for a DS Logon credential generates an activation letter with an activation code that is mailed to the sponsor at his or her home address in DEERS. Once complete, this type of request supports the provisioning of a Premium DS Logon credential.

(ii) *Via remote proofing.* Eligible individuals with an existing DEERS record may apply for a sponsor or dependent DS Logon credential using remote proofing via the My Access Center Web site. Individuals requesting a DS Logon credential via remote proofing must correctly answer a number of system-generated questions. Once remote proofing is completed, a Premium DS Logon credential is provisioned immediately.

(iii) *Via in-person proofing.* Eligible individuals may apply for a sponsor or dependent DS Logon credential using in-person proofing. In-person proofing is performed at Department of Veterans Affairs regional offices where the DS access station application is implemented, and at DoD ID card sites when a DS Logon credential is requested either in conjunction with DoD ID card issuance or during initial enrollment of a surrogate. Once in-person proofing is completed, a Premium DS Logon credential is provisioned immediately. Individuals requesting a DS Logon credential via in-person proofing must present:

(A) *Identity documents.* DS Logon credential applicants must satisfy the identity verification criteria in paragraph 4a of volume 1 of DoD Manual 1000.13, ''DoD Identification (ID) Cards: ID Card Life-Cycle'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/100013_vol1.pdf*) by presenting two forms of government-issued ID, one of which must contain a photograph. The requirement for the primary ID to have a photo cannot be waived. Identity documents must be original or a certified copy. All documentation not in English must have a certified English translation.

(B) *Proof of address.* DS Logon credential applicants must present proof of address, if address on the presented ID is different than the address in DEERS.

(C) *DD Form 214, ''Certificate of Release or Discharge from Active Duty.''* DS Logon credential applicants must present a DD Form 214 if a veteran who was separated before 1982. If separated from the Reserve Component, a DS Logon credential applicant may present a Reserve Component separation document in lieu of a DD Form 214.

(2) *Use.* DS Logon credential holders may use their DS Logon credential at the My Access Center Web site and any other DoD self-service Web site that accepts DS Logon.

(3) *Maintenance.* DS Logon credential holders may use the My Access Center Web site to maintain and update their DS Logon credential and manage their personal settings. The DS Logon credential holder may:

(i) Activate or deactivate an account.

(ii) Reset password.

(iii) Update challenge questions and answers.

(iv) Upgrade from a Basic DS Logon to a Premium DS Logon credential.

(v) Select or update preferred sponsor, if a dependent of two sponsors.

(vi) Manage personal and advanced security settings.

(vii) Manage contact information.

(viii) Manage relationships and access granting.

(ix) Manage the DS Logon credential using additional capabilities as implemented by the Director, DMDC.

(4) *Decomissioning.* DS Logon credentials may be decommissioned by the DS Logon credential holder, via self-service; by an operator, at the request of the DS Logon credential holder; or by the system, when the credential holder no longer has an affiliation to the DoD or is identified as deceased in DEERS.

(5) *Reactivation.* DS Logon credentials may be reactivated if the person is living and still eligible for the credential.

(d) *Associations.* DS Logon supports several types of associations, including DEERS-identified family relationships and operator-initiated and -approved surrogates.

(1) *Family.* Individuals are connected to one another based on their family relationship information in DEERS. A family relationship must exist in DEERS before the relationship can exist in DS Logon.

(i) *Multiple sponsors.* An individual has only one DS Logon credential, regardless of the number of sponsors the individual has (*e.g.,* a dependent child whose parents are both Service members).

(ii) *Transferring families.* If an individual has a second family in DEERS, the individual can move their DS Logon credential to the second family. This changes the assignment of the DS Logon credential from the first family to the second family and removes any granted permissions from the first family.

(2) *Surrogacy.* Surrogacy is a feature that allows an individual who may not be affiliated with the DoD and who may not be related to the DS Logon credential holder or eligible individual by a DoD-recognized family relationship to be granted access to a DS Logon credential holder's or an eligible individual's information. A surrogate may be established as the custodian of a deceased Service member's unmarried minor child(ren) who is under 18, who is at least 18 but under 23 and attending school full-time, or who is incapacitated. A surrogate may also be established as the agent of an incapacitated dependent (*e.g.,* spouse,

parent) or of a wounded, ill, or incapacitated Service member.

(i) *Eligibility.* An operator must first establish an identity in DEERS before establishing the surrogacy association in DS Logon. To establish a surrogate association, the surrogate must present to an operator for approval:

(A) A completed and signed DD Form 3005, ''Application for Surrogate Association for DoD Self-Service (DS) Logon.''

(B) Any additional eligibility documents required by the DD Form 3005 which describe the scope of the surrogate's authority.

(C) Proof of identity, in accordance with the requirements for in-person proofing in paragraph (c)(1)(iii) of this section.

(ii) *Types of surrogates*—(A) *Financial agent (FA).* An eligible individual names an FA to assist with specific financial matters.

(B) *Legal agent (LA).* An eligible individual names an LA to assist with legal matters.

(C) *Caregiver (CG).* An eligible individual names a CG to assist with general health care requirements (example, viewing general health-care related information, scheduling appointments, refilling prescriptions, and tracking medical expenses), but does not make health care decisions.

(D) *Health care agent (HA).* An eligible individual (the patient) names an HA in a durable power of attorney for health care documents to make health care decisions.

(E) *Legal guardian (LG).* An LG is appointed by a court of competent jurisdiction in the United States (or jurisdiction of the United States) to make legal decisions for an eligible individual.

(F) *Special guardian (SG).* An SG is appointed by a court of competent jurisdiction in the United States (or jurisdiction of the United States) for the specific purpose of making health care-related decisions for an eligible individual.

(e) *Permissions.* A sponsor, a sponsor's spouse, and a sponsor's dependent over the age of 18 can manage who has access to their information (*i.e.,* who has access to view and edit their information and who is eligible to act on their behalf). The provisions of this section may be superseded by order of a court of competent jurisdiction.

(1) *Sponsor access.* Sponsors will automatically have access to the information of all dependents under the age of 18.

(2) *Spousal access*—(i) *Automatic.* A sponsor's spouse will automatically have access to the information of all dependent children under the age of 18 whose relationship to the sponsor began on or after the date of marriage of the sponsor and sponsor's spouse.

(ii) *Sponsor-granted.* The sponsor may grant the sponsor's spouse access to the information of dependent children under the age of 18 whose relationship to the sponsor began before the date of marriage of the sponsor and the sponsor's spouse.

(3) *Granted access.* A sponsor, a sponsor's spouse, and a sponsor's dependent over the age of 18 may grant access to their information via the My Access Center Web site in accordance with paragraph (c)(3) of this section. Surrogate access to the information of a sponsor, a sponsor's spouse, and a sponsor's dependent (regardless of age) must be granted via in-person proofing, including the submission of eligibility documents to an operator for approval in accordance with paragraph (d)(2) of this section.

(i) *Access granting by a sponsor.* Sponsors may grant their spouse access to the sponsor's information and the information of any sponsor's dependents under the age of 18. Access to the sponsor's information and the information of any sponsor's dependents under the age of 18 may not be granted to any other sponsor's dependent, unless that dependent has been identified as a surrogate.

(ii) *Access granting by a spouse.* Spouses may grant the sponsor access to the spouse's information. Access to the spouse's information may not be granted to any other sponsor's dependent, unless that sponsor's dependent has been identified as a surrogate.

(iii) *Access granting by a dependent over 18.* A sponsor's dependent over the age of 18 may grant the sponsor and the sponsor's spouse access to the dependent's information. Access to the information of a sponsor's dependent over the age of 18 may not be granted to any other sponsor's dependent, unless that sponsor's dependent has been identified as a surrogate.

Dated: October 27, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–26416 Filed 11–1–16; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register
Vol. 81, No. 212
Wednesday, November 2, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the New Mexico Advisory Committee to the Commission will convene at 11:00 a.m. (MDT) on Wednesday, November 16, 2016, via teleconference. The purpose of the meeting is to receive comments and report from SAC members on their recommendations to develop an outline in preparation of the SAC's report on Elder Abuse in New Mexico. The committee will also discuss next steps for the project.

DATES: Wednesday, November 16, 2016, at 11:00 a.m. (MDT).

ADDRESSES: To be held via teleconference:

Conference Call Toll-Free Number: 1–888–298–3457, Conference ID: 2806935.

FOR FURTHER INFORMATION CONTACT: Malee V. Craft, DFO, *mcraft@usccr.gov,* 303–866–1040.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1–888–298–3457; Conference ID: 2806935. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1–800–977–8339 and provide the FRS operator with the Conference Call Toll-Free Number: 1–888–298–3457, Conference ID: 2806935. Members of the public are invited to submit written comments; the comments must be received in the regional office by Friday, December 16, 2016. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1050, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=264* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

Agenda

- Welcome and Roll-call

  Sandra Rodriguez, Chair, New Mexico Advisory Committee

  Malee V. Craft, Regional Director, Rocky Mountain Regional Office (RMRO)
- Receive comments and recommendations to develop an outline in preparing SAC report on elder abuse
- Next Steps

Dated: October 28, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2016–26438 Filed 11–1–16; 8:45 am]

BILLING CODE

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–71–2016]

Foreign-Trade Zone 134—Chattanooga, Tennessee Application for Subzone Wacker Polysilicon North America LLC Charleston, Tennessee

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Chattanooga Chamber Foundation, grantee of FTZ 134, requesting subzone status for the facility of Wacker Polysilicon North America LLC, located in Charleston, Tennessee. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on October 28, 2016.

The proposed subzone (564 acres) is located at 553 Wacker Blvd. NW., Charleston. A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B–52–2016).

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 12, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 27, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* (202) 482–1346.

Dated: October 28, 2016.

Camille R. Evans,

Acting Executive Secretary.

[FR Doc. 2016–26473 Filed 11–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–050]

Countervailing Duty Investigation of Ammonium Sulfate From the People's Republic of China: Preliminary Affirmative Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of ammonium sulfate from the People's Republic of China (PRC). The period of investigation is January 1, 2015 through December 31, 2015. We invite interested parties to comment on this preliminary determination.

DATES: Effective November 2, 2016.

FOR FURTHER INFORMATION CONTACT: Robert Galantucci, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2923.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The product covered by this investigation is ammonium sulfate from the PRC. For a complete description of the scope of this investigation, *see* Appendix II.

Methodology

The Department is conducting this countervailing duty (CVD) investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[1] For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.[2] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic version are identical in content.

In making these findings, we relied on facts otherwise available. Additionally, because we find that the mandatory respondents did not act to the best of their ability to respond to the Department's requests for information, and therefore impeded this investigation, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.[3] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Preliminary Determination and Suspension of Liquidation

In accordance with sections 776(a)(1), 776(a)(2), and 776(b) of the Act, we applied facts otherwise available with an adverse inference to assign countervailable subsidy rates for non-cooperative mandatory respondents Wuzhoufeng Agricultural Science & Technology Co. Ltd. (Wuzhoufeng AST) and Yantai Jiahe Agriculture Means of Production Co. Ltd. (Yantai AMP). With respect to the all-others rate, section 705(c)(5)(B) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely in accordance with section 776 of the Act, the Department may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated. In this case, the rates assigned to Wuzhoufeng AST and Yantai AMP are based entirely on facts otherwise available, with an adverse inference, under section 776 of the Act. There is no other information on the record with which to determine an all-others rate. As a result, in accordance with section 705(c)(5)(B) of the Act, we have established the all-others rate by applying the countervailable subsidy rates for mandatory respondents Wuzhoufeng AST and Yantai AMP. The preliminary estimated countervailable subsidy rates are summarized in the table below.

Company	Subsidy rate (percent)
Wuzhoufeng Agricultural Science & Technology Co. Ltd	206.72
Yantai Jiahe Agriculture Means of Production Co. Ltd	206.72
All-Others	206.72

In accordance with sections 703(d)(1)(B) and (d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of ammonium sulfate from the PRC as described in the ''Scope of the Investigation'' entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit for such entries of merchandise in the amounts indicated above.

International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

Interested parties may submit case and rebuttal briefs, as well as request a hearing.[4] Case briefs may be submitted

[1] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Ammonium Sulfate from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] *See* sections 776(a) and (b) of the Act.

[4] *See* 19 CFR 351.309(c)–(d), 19 CFR 351.310(c).

no later than 30 days after the publication of this preliminary determination in the **Federal Register**, and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs. Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the **Federal Register**.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: October 24, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Injury Test
VI. Application of the CVD Law to Imports from the PRC
VII. Use of Facts Otherwise Available and Adverse Inferences
VIII. Calculation of the All-Others Rate
IX. ITC Notification
X. Public Comment
XI. Conclusion

Appendix II

Scope of the Investigation

The merchandise covered by this investigation is ammonium sulfate in all physical forms, with or without additives such as anti-caking agents. Ammonium sulfate, which may also be spelled as ammonium sulphate, has the chemical formula $(NH_4)_2SO_4$.

The scope includes ammonium sulfate that is combined with other products, including by, for example, blending (*i.e.,* mixing granules of ammonium sulfate with granules of one or more other products), compounding (*i.e.,* when ammonium sulfate is compacted with one or more other products under high pressure), or granulating (incorporating multiple products into granules through, *e.g.,* a slurry process). For such combined products, only the ammonium sulfate component is covered by the scope of this investigation.

Ammonium sulfate that has been combined with other products is included within the scope regardless of whether the combining occurs in countries other than China.

Ammonium sulfate that is otherwise subject to this investigation is not excluded when commingled (*i.e.,* mixed or combined) with ammonium sulfate from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

The Chemical Abstracts Service (CAS) registry number for ammonium sulfate is 7783–20–2.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3102.21.0000. Although this HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

[FR Doc. 2016–26469 Filed 11–1–16; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Market Risk Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on November 17, 2016 from 10:00 a.m. to 1:30 p.m., the Market Risk Advisory Committee (MRAC) will hold a public meeting at the CFTC's Washington, DC, headquarters. The meeting will be held in the Conference Center at the Commodity Futures Trading Commission's headquarters in Washington, DC. At this meeting: (1) The CCP Risk Management Subcommittee (CRM) will present to the MRAC its final recommendations on how Central Counterparties (CCPs) can further enhance their efforts in preparing for the default of a significant clearing member as discussed at the April 2, 2015, November 2, 2015, and June 27, 2016 meetings of the MRAC; and (2) the MRAC will discuss the Bank of England's coordinated CCP default fire drill.

DATES: The meeting will be held on November 17, 2016 from 10:00 a.m. to 1:30 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by November 24, 2016.

ADDRESSES: The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Written statements should be submitted by mail to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, attention: Office of the Secretary, or by electronic mail to: *secretary@cftc.gov.* Please use the title ''Market Risk Advisory Committee'' in any written statement you submit. Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC Web site, *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Petal Walker, MRAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; (202) 418–5010.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone by calling a domestic toll-free telephone or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Toll Free: 866–844–9416.

International Toll and Toll Free: Will be posted in the latest press release for the meeting on the MRAC's meetings Web page, *http://www.cftc.gov/About/CFTCCommittees/MarketRiskAdvisoryCommittee/mrac_meetings.* After opening the latest press release, click on Related Links for the number(s).

Pass Code/Pin Code: CFTC.

The meeting agenda may change to accommodate other MRAC priorities. For agenda updates, please visit the MRAC meetings Web page. After the meeting, a transcript of the meeting will be published through a link on the CFTC's Web site, *http://www.cftc.gov.* All written submissions provided to the CFTC in any form will also be published on the CFTC's Web site. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

Authority: 5 U.S.C. app. 2 § 10(a)(2).

Dated: October 27, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–26426 Filed 11–1–16; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

[Renew Collection 3038–0025]

Agency Information Collection Activities: Practice by Former Members and Employees of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'') is

announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. This notice announces the intent to renew the Information Collection Request (''ICR'') abstracted below, and describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before January 3, 2017.

ADDRESSES: You may submit comments, identified by ''Practice by Former Members and Employees of the Commission Pursuant to 17 CFR 140.735–6'' or by ''OMB Control No. 3038–0025, by any of the following methods:

- *The Agency's Web site, at http://comments.cftc.gov/:* Following the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Gomez, Counsel, Office of the General Counsel, Commodities Futures Trading Commission, 202–418–5627; email: *BGomez@cftc.gov,* and refer to OMB Control No. 3038–0025.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Practice by Former Members and Employees of the Commission (OMB Control No. 3038–0025). This is a request for extension of a currently approved information collection.

Abstract: Commission Rule 140.735–6 governs the practice before the Commission of former members and employees of the Commission and is intended to ensure that the Commission is aware of any existing conflict of interest. The rule generally requires former members and employees who are employed or retained to represent any person before the Commission within two years of the termination of their CFTC employment to file a brief written statement with the Commission's Office of General Counsel. The proposed rule was promulgated pursuant to the Commission's rulemaking authority contained in section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (1994), as amended. With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Burden Statement: Section 140.735–6 of the Commission's regulations result in information collection requirements within the meaning of the PRA. The respondent burden for this collection is estimated to average 0.10 hours per response to file the brief written statement. This estimate include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Estimated number of responses: 30.

Estimated total annual burden on respondents: 0.10 hours.

Estimated total annual burden on respondents: 3.

Frequency of collection: On occasion.

There are no startup capital costs or operating and maintenance costs associated with this collection.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: October 27, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–26417 Filed 11–1–16; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

Announcement of Requirements and Registration for the EdSim Challenge

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Notice; public challenge.

SUMMARY: The U.S. Department of Education (the Department) is announcing the EdSim Challenge (Challenge), a prize competition funded by the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV or Act). The Challenge calls upon the virtual reality, video game developer, and educational technology communities to design next-generation computer-generated simulations for career and technical education (CTE) that prepare students for the globally competitive workforce of the 21st century.

The Challenge seeks designs that lead to the acquisition of academic, technical, and employability skills through engaging simulated experiences in the hybrid reality continuum. For the purpose of this notice, ''hybrid reality continuum'' refers to the range of computer-generated simulations that extend from completely simulated environments to environments that incorporate aspects of the real world.[1] For the purpose of this Challenge, ''EdSim'' is broadly defined as computer-generated three-dimensional learning environments, including virtual, augmented, and mixed realities that draw upon or mimic real-world experiences and are designed to educate users.

The purpose of this Challenge is to stimulate the marketplace for computer-

[1] Estes, J. S., Dailey-Hebert, A., & Choi, D. H. (2016). Integrating Technological Innovations to Enhance the Teaching-Learning. In D. H. Choi, A. Dailey-Hebert, and J. S. Estes (Ed.S.) Process. *Emerging Tools and Applications of Virtual Reality in Education* (pp 277–304), Hersey, PA: Information Science Reference (an imprint of IGI Global).

generated virtual and augmented reality educational experiences that combine existing and future technologies with skill-building content and embedded assessment.

DATES: We must receive your first round Challenge submission on or before 4:59:59 p.m., Washington, DC time on January 17, 2017.

The timeframes for judging the first round submissions and selecting the finalists will be determined by the Department.

The Department will conduct at least one online information session during the first round submission phase of the Challenge. The date of the session will be determined and announced by the Department, posted on *www.edsimchallenge.com* (Challenge Web page), and sent to entrants by email. The dates for Challenge events and deadline for second round submissions will be determined and announced by the Department.

The date for the final judging will be determined and announced by the Department following Demonstration Day.

The winner(s) will be announced on a date determined and announced by the Department.

ADDRESSES: Submit entries for the Challenge on *www.edsimchallenge.com.*

FOR FURTHER INFORMATION CONTACT: Albert Palacios, U.S. Department of Education, 550 12th Street SW., Room 11086, Washington, DC 20202 or by email: *albert.palacios@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Administration of the Challenge Competition

The Challenge will be conducted by the U.S. Department of Education. Luminary Labs, L.L.C. (Luminary Labs) has been contracted by the Department to assist and support the Department in organizing and managing this competition. Activities conducted by Luminary Labs may also include providing technical assistance to potential entrants, entrants, and finalists.

II. Subject of Challenge Competition

Simulated digital learning environments, such as virtual and augmented reality experiences, training simulations, and multiplayer video games, represent an emerging class of instructional content delivery in education. Research indicates that simulation-based learning provides students with enriched experiences in information retention, engagement, skills training, and learning outcomes.[2] The virtual reality, video game developer, and educational technology communities are invited to design simulations that prepare America's students for the increasingly competitive workforce through next-generation career and technical education.

A call for public feedback, which took place from November 4 to December 9, 2015, helped to shape the Challenge. This public feedback informed the design of several Challenge elements, including the selection criteria, approach to technology, and the content of the submission form. Specifically, the public feedback indicated that the field was interested in the Department allowing maximum flexibility to entrants designing concepts. More information regarding the call for public feedback can be found on the Challenge Web page.

The Challenge will be conducted in four phases:

(1) Challenge launch and the first round submission phase;

(2) Judging of first round submissions and selection of finalists;

(3) Virtual Accelerator Phase (inclusive of finalist mentorship, Innovator's Boot Camp, second round submissions, and Demonstration Day); and

(4) Final judging and selection of winner(s).

The Challenge calls upon potential entrants to submit information concerning concepts that would allow users to gain and demonstrate new academic, technical, and employability skills through engaging simulation experiences. The Department is most interested in immersive and engaging simulations that will help define the next generation of applied learning.

The Department invites potential entrants to submit concepts which may include a prototype for discrete, playable simulations with clearly defined learning goals. The Department seeks concepts that aim to build competency in multiple skills by familiarizing the user with a particular career pathway or providing the user with guided experiences.

The Department seeks concepts with the potential to connect to other simulations and set the stage for a more competitive and robust marketplace for educational simulations. The Department encourages developers to make aspects of their EdSims available through open source licenses and low-cost sharable components in order to increase access to CTE and educational simulations.[3]

Up to five finalists will be selected from the pool of submissions received during the first round submission phase. From the total prize pool of $680,000, each of the finalists will be awarded $50,000 for their submission based on a review by the judging panel using the criteria in paragraph (a) in the *Selection Criteria* section of this notice. Finalists will be encouraged to use their winnings to improve upon their submissions. Finalists are required to participate in the Virtual Accelerator Phase, submit a second round submission, and attend the Innovator's Boot Camp and Demonstration Day. After the Virtual Accelerator Phase, Demonstration Day, and final judging using the criteria in paragraph (b) in the *Selection Criteria* section of this notice, the winner(s) will be selected by the Department and receive the remainder of the prize money.

Virtual Accelerator Phase Description

The Virtual Accelerator Phase begins on the date finalists are announced and concludes on Demonstration Day,[4] which is the day when finalists present their second round submissions to the judging panel. During this phase, the finalists will revise and improve upon their submissions in preparation for Demonstration Day. On Demonstration Day, the finalists will be required to present their concept and demonstrate a final prototype.

General Elements of the Virtual Accelerator Phase include the following—

(1) *Mentorship:* Finalists will have access to subject matter experts (SMEs) who will act throughout the Virtual Accelerator Phase as mentors, helping the finalists to revise and improve their submissions.

(2) *Innovator's Boot Camp:*[5] Finalists will be required to participate in the Innovator's Boot Camp. The Innovator's Boot Camp will either be a live event in the greater New York City metropolitan area, or a virtual event. Finalists will be required to cover their own expenses to

[2] Tobias, S., and J. D. Fletcher. ''Reflections on 'A Review of Trends in Serious Gaming' '' Review of Educational Research 82, no. 2 (2012): 233–37; Rutten, Nico, Wouter R. Van Joolingen, and Jan T. Van Der Veen. ''The Learning Effects of Computer Simulations in Science Education.'' *Computers & Education* 58, no. 1 (2012): 136–53.

[3] Information on open source education technology and resources can be found on the Department Web site at *http://tech.ed.gov/developers.*

[4] The date of the announcement of the finalists will be determined by the Department.

[5] The date of the Innovator's Boot Camp will be determined by the Department.

attend the Innovator's Boot Camp and may use their prize money for this purpose. The Innovator's Boot Camp is expected to be conducted over a three-day period. Finalists will receive guidance through teaching modules, which may include hands-on activities, with SMEs and Luminary Labs staff. While the agenda has yet to be finalized, major themes will likely include user testing and interface development along with instructions on how to best revise and improve finalists' submissions, potentially including various design and innovation methodologies that would improve access to CTE programs for everyone, including individuals with disabilities.

(3) *Demonstration Day Presentation Support:* After the Innovator's Boot Camp and prior to Demonstration Day, all finalists will have the opportunity to practice their presentations and receive feedback from Luminary Labs on how to improve their Demonstration Day presentations.

Following Demonstration Day, a judging panel will provide recommendations to the Department on the selection of one or more winners from the pool of finalists to receive the remainder of the prize money.

Program Authority: The goals, purposes, and activities related to the Challenge are authorized by section 114(c)(1) of Perkins IV, 20 U.S.C. 2324(c)(1). Under this section, the Secretary of the U.S. Department of Education is authorized to carry out research, development, dissemination, evaluation and assessment, capacity building, and technical assistance with regard to CTE programs under Perkins IV. Following the Challenge, the Department plans to post abstracts of the submissions selected as finalists and winners on the Challenge Web page for public viewing. Abstracts will include a concept summary and a selection of multimedia elements from each finalist's and winner's submission. The judge's scores will not be posted. Neither the Department nor Luminary Labs will provide feedback to entrants that are not selected as finalists.

III. Eligibility

(a) Eligible entrants must be:

(1) Individuals at least 18 years of age and a citizen or permanent resident of the United States; [6]

(2) Teams of individuals that:

(i) Are all at least 18 years of age;

(ii) Include at least one citizen or permanent resident of the United States; and

(iii) May also include foreign citizens who affirm at the time of submission of an entry for the Challenge that they are foreign citizens, who are not permanent residents; or

(3) An entity registered or incorporated in accordance with applicable State and local laws, and maintaining a primary place of business in the United States. The entity may include foreign citizens participating as employees of the entity.

(b) Ineligible entrants include—

(1) A foreign citizen unless participating as part of an eligible team or entity;

(2) A Federal entity;

(3) A Federal employee acting within the scope of his or her employment; and

(4) All employees of the Department, Luminary Labs, Challenge sponsors, or any other individual or entity associated with the development or administration of the Challenge, as well as members of such persons' immediate families (spouses, children, siblings, parents), and persons living in the same household as such persons, whether or not related.

(c) Entrants must:

(1) Register on the Challenge Web page (see *Additional Terms* that are Part of the *Official Rules,* under the *General Terms and Conditions* in this notice);

(2) Enter a submission on the Challenge Web page according to the rules, terms, and conditions in this notice;

(3) Comply with all requirements of the Challenge;

(4) Provide affirmation upon submission of an entry for the Challenge that an entrant is eligible under subsection (a) of this section. If selected as a finalist, entrants must provide documentation to demonstrate their eligibility at that time.

(5) Agree to—

(i) Assume any and all risks and waive claims against the Federal government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in the Challenge, whether the injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arises through negligence or otherwise;

(ii) Indemnify the Federal government against third party claims for damages arising from, or related to, competition activities, patents, copyrights, and trademark infringements; and

(iii) Comply with and abide by the *Official Rules, Terms and Conditions* in this notice, and the decisions of the Department which shall be final and binding in all respects.

(d) Entrants are not required to obtain liability insurance or demonstrate financial responsibility in order to participate in the Challenge.

IV. Prizes

The total prize pool for the Challenge is $680,000. From the $680,000 Challenge prize pool funds, up to five finalists will be awarded $50,000 each following the judging of the first round submissions. Finalists will improve upon and revise their submissions during the Virtual Accelerator Phase. At the conclusion of the Virtual Accelerator Phase, finalists must submit a second round submission and present their submissions on Demonstration Day. After Demonstration Day, a judging panel will provide recommendations to the Department on the selection of one or more winners from the pool of finalists to receive the remainder of the prize money.

Prizes awarded under this competition will be paid by electronic funds transfer. Winners are responsible for any applicable local, State, and Federal taxes and reporting that may be required under applicable tax laws.

V. Selection Criteria

(a) To participate in the Challenge, an entrant must submit an eligible entry according to the *Eligibility* section of this notice. Each of the following five selection criteria may be assigned up to five points during the judging of first round submissions in order to select finalists (for a total of up to 25 points). The following criteria will be used to select the finalists:

(1) *Learning Outcomes (up to 5 points).* The extent to which the submission contains: Clearly defined academic, technical, and employability skill-learning objectives; a comprehensive description of the desired change or improvement in the user's knowledge and skills; and an efficient mechanism to provide feedback to the user and instructor with respect to progress toward achievement of the learning outcomes.

(2) *Engagement (up to 5 points).* The extent to which the submission describes an engaging user experience that is on par with commercially available entertainment games.

(3) *Commitment (up to 5 points).* The extent that the submission demonstrates an appropriate level of commitment and ability of the entrant to move from

[6] The 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the outlying areas of the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

concept to the demonstrative prototype within the timeline of the Challenge.

(4) *Implementation Strategy (up to 5 points).* The extent to which the submission considers the implementation challenges that schools face, such as cost and potential technological constraints, including how to integrate with existing and future technology.

(5) *Scalability and Expansion (up to 5 points).* The extent to which the submission demonstrates the scalability of the simulation, including its potential to connect with other simulations, as well as set the stage for a more competitive and robust marketplace for educational simulations.

(b) When judging the finalist submissions, including a prototype, judges will recommend to the Department the winner(s) from the pool of the finalists. From the pool of finalists, the winner(s) will be selected based on the following six criteria. Each of the six selection criteria may be assigned up to five points during the selection of the winner(s) from the pool of finalists (for a total of up to 30 points). The following criteria will be used to select the winner(s):

(1) *Learning Outcomes (up to 5 points).* The extent to which the simulation prototype contains clearly defined academic, technical, and employability learning objectives; spurs change or improvement in the user's knowledge and skills; and provides data to the user and instructor with respect to progress toward achievement of the learning outcomes.

(2) *Engagement—User Experience (up to 5 points).* The extent to which the simulation prototype demonstrates an engaging user experience on par with commercially available entertainment games.

(3) *Engagement—User Interface (up to 5 points).* The extent to which the simulation prototype exhibits a thoughtful user interface design on par with commercially available entertainment games.

(4) *Commitment (up to 5 points).* The extent to which the submission—

(i) Demonstrates the entrant's evolution and improvement of the concept; and

(ii) Illustrates the entrant's ability and intention to improve upon and scale the simulation beyond the Challenge timeframe.

(5) *Implementation Strategy (up to 5 points).* The extent to which the submission describes a detailed plan for implementation that takes into account potential barriers such as cost and technological constraints, including integration with existing and future technology, and proposes potential solutions to overcome such barriers.

(6) *Long-term Vision (up to 5 points).* The extent to which the submission—

(i) Demonstrates a plan for encouraging collaboration among the developer community, including making aspects of the solution available through open source licenses; and

(ii) Provides a vision of how the entrant's plan will stimulate the broader educational simulation market.

VI. Submission Information

1. To participate in the Challenge, an entrant must—

(a) Register on the Challenge Web page.

(b) Enter the required information on the Challenge Web page submission form.

2. *Content and Form of Submission:*

To submit an entry to the first round of the Challenge, an entrant must complete the submission form on the Challenge Web page. Finalists must submit a second round submission using the second round submission form on the Challenge Web page to be eligible for winner selection.

3. *Submission Dates and Times:*

The first round submissions phase officially begins November 2, 2016 with this announcement of the Challenge and continues to January 17, 2017 at 4:59:59 p.m., Washington, DC time. Luminary Labs is the official timekeeper for the Challenge.

Submissions must be received during the first round submissions phase of the Challenge to be eligible. To submit an entry to the Challenge, an entrant must go to the Challenge Web page and complete all required fields of the submission form before the close of the first round submissions phase. Each entrant must complete all of the required fields in the submission form in accordance with the *Official Rules, Terms, and Conditions* section of this notice. All entrants are required to provide consent to those *Official Rules, Terms, and Conditions* upon submitting an entry. Once submitted, a submission may not be altered during the first round submissions phase. The Department reserves the right to disqualify any submission that the Department deems inappropriate.

Entrants may enter individually or as part of a team, and teams are strongly encouraged. Each team member must be clearly identified on the team's submission form for the team to be eligible. Teams must designate a primary contact to serve as the team lead (Team Lead) and manage the distribution of any awarded prizes. In the event a dispute regarding the identity of the entrant who actually submitted the entry cannot be resolved by the Department, the affected entry will be deemed ineligible.

The first round submissions phase closes at 4:59:59 p.m., Washington, DC time on January 17, 2017. The Department encourages entrants to submit entries as far in advance of the deadline as possible and suggests not later than one hour before the deadline to ensure the completed submission is received. If an entrant is unable to submit an entry before the deadline date because of a technical problem with the Challenge Web page system, the entrant must immediately contact the person listed under **FOR FURTHER INFORMATION CONTACT** in this notice, and provide an explanation of the technical problem experienced on the Challenge Web page system. Where possible, this should include a screenshot or photograph of the on-screen problem. The Department will accept the entrant's submission if the Department can confirm that a technical problem occurred with the Challenge Web page system and that the technical problem affected the entrant's ability to submit an entry by 4:59:59 p.m., Washington, DC time, on the entry deadline date. The Department will contact the entrant after a determination is made on whether the entry will be accepted.

Note: These extensions apply only to the unavailability of, or technical problems with, the Challenge Web page system. The Department will not grant an entrant an extension if the entrant failed to submit an entry in the system by the submission deadline date and time, or if the technical problem experienced is unrelated to the Challenge Web page system.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the submission process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the submission process, the entry remains subject to all other requirements and limitations in this notice.

VII. Submission Review Information

Review and Selection Process

Should the volume of first round submissions exceed the capacity of the independent judges to conduct a thorough evaluation of the submissions, an independent review panel with expertise relevant to the criteria described in the *Award Selection Criteria* section of this notice will conduct a preliminary review of the first

round submissions. In conducting the preliminary review, the independent review panel will assign scores to each first round submission according to the criteria described in the *Award Selection Criteria* section of this notice. During the preliminary review, each criterion may be assigned up to 5 points for a total of up to 25 points.

The size of the independent review panel will be based on the number of submissions received. Each member of the independent review panel will score a maximum of thirty submissions and all submissions will receive scores from three different independent review panelists.

The submissions with the thirty highest scores assigned by the independent review panel will then be scored by independent judges based on the quality of each entry according to the criteria described in the *Award Selection Criteria* section of this notice.

Based on their individual expertise, judges will recommend up to five finalists to be selected by the Department. Once the Department has selected a group of finalists based on the recommendations of the judges consistent with the selection criteria, the finalists will then refine their submissions during the Virtual Accelerator Phase. At the conclusion of the Virtual Accelerator Phase, finalists will submit a second round submission and present their submissions on Demonstration Day.

Entries will be scored by the judges based on the quality of each entry according to the criteria described in paragraph (a) of the *Selection Criteria* section in this notice. When selecting finalists from the first round submission phase, each of the five criteria may be worth up to five points for a total of up to 25 points. When selecting the winner(s) from the finalists, judges will consider the six criteria described in paragraph (b) of the *Selection Criteria* section in this notice. Each of the six criteria will be assigned up to five points for a total of up to 30 points available.

By participating in the Challenge, each entrant acknowledges and agrees that such recommendations of the judges based on the criteria may differ and agrees to be bound by, and not to challenge, the final decisions of the Department.

VIII. Official Rules, Terms and Conditions

General Terms and Conditions

The Department reserves the right to suspend, postpone, cease, terminate, or otherwise modify this Challenge or any entrant's participation in the Challenge, at any time at the Department's sole discretion.

All entry information submitted on the Challenge Web page and all materials, including any copy of the submission, becomes property of the Department and will not be acknowledged or returned by Luminary Labs or the Department. However, entrants retain ownership of their concepts, including any software, research, or other intellectual property (IP) that they develop in connection therewith, subject to the license granted to the Department to use submissions as set forth in the *Intellectual Property of Solutions* section of this notice. Proof of submission is not considered proof of delivery or receipt of such entry. Furthermore, the Department and Luminary Labs shall have no liability for any submission that is lost, intercepted, or not received by the Department or Luminary Labs. The Department and Luminary Labs assume no liability or responsibility for any error, omission, interruption, deletion, theft, destruction, unauthorized access to, or alteration of, submissions.

Representations and Warranties/ Indemnification

By participating in the Challenge, each entrant represents, warrants, and covenants as follows:

(a) The entrants are the sole authors, creators, and owners of the submission;

(b) The entrant's submission—

(i) Is not the subject of any actual or threatened litigation or claim;

(ii) Does not, and will not, violate or infringe upon the intellectual property rights, privacy rights, publicity rights, or other legal rights of any third party;

(iii) Does not contain any harmful computer code (sometimes referred to as ''malware,'' ''viruses,'' or ''worms''); and

(c) The submission, and entrants' use of the submission, does not, and will not, violate any applicable laws or regulations of the United States.

If the submission includes the work of any third party (such as third party content or open source code), the entrant must be able to provide, upon the request of the Department or Luminary Labs, documentation of all appropriate licenses and releases for such third party works. If the entrant cannot provide documentation of all required licenses and releases, the Department reserves the right, in its sole discretion, to disqualify the applicable submission, or direct the entrant to secure the licenses and releases for the Department's benefit within three days of notification of the missing documentation and allow the applicable submission to remain in the Challenge. In addition, the Department reserves all rights to pursue an entrant for claims based on damages incurred by entrant's failure to obtain such licenses and releases.

Entrants will indemnify, defend, and hold harmless the Department and Luminary Labs from and against all third party claims, actions, or proceedings of any kind and from any and all damages, liabilities, costs, and expenses relating to, or arising from, entrant's submission or any breach or alleged breach of any of the representations, warranties, and covenants of entrant hereunder. The Department reserves the right to disqualify any submission that the Department, in its discretion, deems to violate these *Official Rules, Terms and Conditions* in this notice.

Submission License

Each entrant retains title to, and full ownership of, its submission. The entrant expressly reserves all intellectual property rights not expressly granted under this agreement. By participating in the Challenge, each entrant hereby irrevocably grants a license to the Department and Luminary Labs to store and access submissions in perpetuity that may be reproduced or distributed in the future. Please refer to the *Intellectual Property of Submissions* section of this notice for further information regarding rights to submissions.

Publicity Release

By participating in the Challenge, each entrant hereby irrevocably grants to the Department and Luminary Labs the right to use such entrant's name, likeness, image, and biographical information in any and all media for advertising and promotional purposes relating to the Challenge in perpetuity and otherwise as stated in the *Submission License* section of this notice.

Disqualification

The Department reserves the right in its sole discretion to disqualify any entrant who is found to be tampering with the entry process or the operation of the Challenge, Challenge Web page, or other Challenge-related Web pages; to be acting in violation of these *Official Rules, Terms and Conditions;* to be acting in an unsportsmanlike or disruptive manner, or with the intent to disrupt or undermine the legitimate operation of the Challenge; or to annoy, abuse, threaten, or harass any other person; and, the Department reserves the right to seek damages and other

remedies from any such person to the fullest extent permitted by law.

Links to Third-Party Web Pages

The Challenge Web page may contain links to third-party Web pages that are not owned or controlled by Luminary Labs or the Department. Luminary Labs and the Department do not endorse or assume any responsibility for any such third party sites. If an entrant accesses a third-party Web page from the Challenge Web page, the entrant does so at the entrant's own risk and expressly relieves Luminary Labs or the Department from any and all liability arising from use of any third-party Web page content.

Disclaimer

The Challenge Web page contains information and resources from public and private organizations that may be useful to the reader. Inclusion of this information does not constitute an endorsement by the Department or Luminary Labs of any products or services offered or views expressed. Blog articles provide insights on the activities of schools, programs, grantees, and other education stakeholders to promote continuing discussion of educational innovation and reform. Blog articles do not endorse any educational product, service, curriculum, or pedagogy.

The Challenge Web page also contains hyperlinks and URLs created and maintained by outside organizations, which are provided for the reader's convenience. The Department and Luminary Labs are not responsible for the accuracy of the information contained therein.

Notice to Finalists/Winner(s)

Attempts to notify finalists and winner(s) will be made using the email address associated with the Team Lead's Luminary Lightbox™ account. The Department and Luminary Labs are not responsible for email or other communication problems of any kind.

If, despite reasonable efforts, an entrant does not respond within three days of the first notification attempt regarding selection as a finalist (or a shorter time as exigencies may require) or if the notification is returned as undeliverable to such entrant, that entrant may forfeit the entrant's finalist status and associated prizes, and an alternate finalist may be selected.

If any potential prize winner is found to be ineligible, has not complied with these *Official Rules, Terms and Conditions,* or declines the applicable prize for any reason prior to award, such potential prize winner will be disqualified. An alternate winner may be selected, or the applicable prize may go unawarded.

Attendance

To maintain eligibility, finalists are required to participate in Challenge activities organized by the Department and Luminary Labs, which include the Virtual Accelerator Phase, Innovator's Boot Camp, and Demonstration Day. If a finalist is unable to participate in any mandatory activities, the finalist will not be eligible to win the Challenge. Finalists and winner(s) are required to attend these events at their own expense.

Intellectual Property (IP) of Submissions

Entrants retain ownership of their submission, including any software, research or other IP that they develop in connection therewith, subject to the license granted to the Department to use submissions as set forth herein.

Entrants retain all rights to the submission and any invention or work, including any software, submitted as part of the submission, subject to the following—

If the submission wins, the Department retains an exclusive, nontransferable, irrevocable, paid-up world-wide license to publish and publicly demonstrate any such invention or work of the submission throughout the world, in perpetuity, for Federal purposes.

As specified in *Selection Criteria* (b)(6) *Long-term Vision,* finalists will be evaluated, in part, on the aspects of their simulation they plan to make available through open source licenses. Finalists will be asked to provide evidence of their progress towards this goal as part of the second round submission.

Dates/Deadlines

The Department reserves the right to modify any dates or deadlines set forth in these *Official Rules, Terms and Conditions* or otherwise governing the Challenge.

Challenge Termination

The Department reserves the right to suspend, postpone, cease, terminate or otherwise modify this Challenge, or any entrant's participation in the Challenge, at any time at the Department's discretion.

General Liability Release

By participating in the Challenge, each entrant hereby agrees that—

(a) The Department and Luminary Labs shall not be responsible or liable for any losses, damages, or injuries of any kind (including death) resulting from participation in the Challenge or any Challenge-related activity, or from entrants' acceptance, receipt, possession, use, or misuse of any prize; and

(b) The entrant will indemnify, defend, and hold harmless the Department and Luminary Labs from and against all third party claims, actions, or proceedings of any kind and from any and all damages, liabilities, costs, and expenses relating to, or arising from, the entrant's participation in the Challenge.

Without limiting the generality of the foregoing, the Department and Luminary Labs are not responsible for incomplete, illegible, misdirected, misprinted, late, lost, postage-due, damaged, or stolen entries or prize notifications; or for lost, interrupted, inaccessible, or unavailable networks, servers, satellites, Internet Service Providers, Web pages, or other connections; or for miscommunications, failed, jumbled, scrambled, delayed, or misdirected computer, telephone, cable transmissions or other communications; or for any technical malfunctions, failures, difficulties, or other errors of any kind or nature; or for the incorrect or inaccurate capture of information, or the failure to capture any information.

These *Official Rules, Terms and Conditions* cannot be modified except by the Department in its sole and absolute discretion. The invalidity or unenforceability of any provision of these *Official Rules, Terms and Conditions* shall not affect the validity or enforceability of any other provision. In the event that any provision is determined to be invalid or otherwise unenforceable or illegal, these *Official Rules, Terms and Conditions* shall otherwise remain in effect and shall be construed in accordance with their terms as if the invalid or illegal provision were not contained herein.

Exercise

The failure of the Department to exercise or enforce any right or provision of these *Official Rules, Terms and Conditions* shall not constitute a waiver of such right or provision.

Governing Law

All issues and questions concerning the construction, validity, interpretation, and enforceability of these *Official Rules, Terms and Conditions* shall be governed by and construed in accordance with U.S. Federal law as applied in the Federal courts of the District of Columbia if a complaint is filed by any party against the Department, and the laws of the

State of New York as applied in the New York state courts in New York City if a complaint is filed by any party against Luminary Labs.

Privacy Policy

By participating in the Challenge, each entrant hereby agrees that occasionally, the Department and Luminary Labs may also use the entrant's information to contact the entrant about Federal Challenge and innovation related activities, and acknowledges that the entrant has read and accepted the privacy policy at: *www.edsimchallenge.com/privacy.*

Additional Terms That Are Part of the Official Rules, Terms and Conditions

Please review the Luminary Lightbox™ Terms of Service at: *www.LuminaryLightbox.com/terms* for additional rules that apply to participation in the Challenge and more generally to use of the Challenge Web page. Such Terms of Service are incorporated by reference into these *Official Rules, Terms and Conditions.* If there is a conflict between the Terms of Service and these *Official Rules, Terms and Conditions,* the latter terms shall control with respect to this Challenge only.

Participation in the Challenge constitutes an entrant's full and unconditional agreement to these *Official Rules, Terms and Conditions.* By entering, an entrant agrees that all decisions related to the Challenge that are made pursuant to these *Official Rules, Terms and Conditions* are final and binding, and that all such decisions are at the sole discretion of the Department or Luminary Labs.

Luminary Labs collects personal information from entrants to the Challenge. The information collected is subject to the privacy policy located here: *www.LuminaryLightbox.com/privacy.*

Winners List/Official Rules/Contact

To obtain a list of finalists and winner(s) (after the conclusion of the Challenge) or a copy of these Official Rules, Terms, and Conditions, send a self-addressed envelope with the proper postage affixed to: Luminary Labs, 30 West 22nd St., Floor 6, New York, NY 10010. Please specify ''Winners List'' or ''Official Rules'' and the name of the specific Challenge in this request.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section IX of this notice, should you have any comments or questions about these *Official Rules, Terms, and Conditions.*

IX. Agency Contact

For Further Information Contact: Albert Palacios, U.S. Department of Education, 550 12th Street SW., Room 11–086, Washington, DC 20202 or by email: *albert.palacios@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

X. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disk) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: October 26, 2016.

Johan E. Uvin,

Deputy Assistant Secretary, Delegated the Duties of Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2016–26262 Filed 11–1–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB). SEAB was reestablished pursuant to the Federal Advisory Committee Act. This notice is provided in accordance with the Act.

DATES: December 13, 2016, 8:30 a.m.–12:30 p.m.

ADDRESSES: Department of Energy, 1000 Independence Avenue SW., Room 1E–245, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Karen Gibson, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; *seab@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board was established to provide advice and recommendations to the Secretary on the Department's basic and applied research, economic and national security policy, educational issues, operational issues, and other activities as directed by the Secretary.

Purpose of the Meeting: This meeting is the quarterly meeting of the Board.

Tentative Agenda: The meeting will start at 8:30 a.m. on December 13th. The tentative meeting agenda includes: Updates from SEAB's task forces, informational briefings, and an opportunity for comments from the public. The meeting will conclude at 12:30 p.m. Agenda updates will be posted on the SEAB Web site prior to the meeting: *www.energy.gov/seab.*

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Karen Gibson no later than 5:00 p.m. on Thursday, December 8, 2016 at *seab@hq.doe.gov.* Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government issued identification. Please note that the Department of Homeland Security (DHS) has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable: American Samoa, Missouri, Washington and Wisconsin. Acceptable alternate forms of Photo-ID include:

- U.S. Passport or Passport Card
- An Enhanced Driver's License or Enhanced ID-Card issued by the state of Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License)
- A military ID or other government issued Photo-ID card

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 8:15 a.m. on December 13th.

Those not able to attend the meeting or who have insufficient time to address

the committee are invited to send a written statement to Karen Gibson, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, email to *seab@hq.doe.gov.*

Minutes: The minutes of the meeting will be available on the SEAB Web site or by contacting Ms. Gibson. She may be reached at the postal address or email address above, or by visiting SEAB's Web site at *www.energy.gov/seab.*

Issued in Washington, DC, on October 27, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–26410 Filed 11–1–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2154–005.

Applicants: Twin Eagle Resource Management, LLC.

Description: Notice of Change in Status of Twin Eagle Resource Management, LLC.

Filed Date: 10/25/16.

Accession Number: 20161025–5136.

Comments Due: 5 p.m. ET 11/15/16.

Docket Numbers: ER16–938–005.

Applicants: Arizona Public Service Company.

Description: Compliance filing: Compliance Filing—APS EIM OATT Revisions to be effective 5/1/2016.

Filed Date: 10/25/16.

Accession Number: 20161025–5112.

Comments Due: 5 p.m. ET 11/15/16.

Docket Numbers: ER16–2304–001

Applicants: Duke Energy Florida, LLC.

Description: Compliance filing: Unfiled GIAs Compliance Filing to be effective 9/26/2016.

Filed Date: 10/26/16.

Accession Number: 20161026–5063.

Comments Due: 5 p.m. ET 11/16/16.

Docket Numbers: ER17–181–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Tariff Cancellation: Submission of Notice of Cancellation—NREMC to be effective 6/30/2015.

Filed Date: 10/25/16.

Accession Number: 20161025–5107.

Comments Due: 5 p.m. ET 11/15/16.

Docket Numbers: ER17–182–000.

Applicants: Pacific Gas and Electric Company.

Description: Compliance filing: Resubmittal of Revisions to WDT LGIA & SGIA In Compliance With Orders 827 & 828 to be effective 10/17/2016.

Filed Date: 10/26/16.

Accession Number: 20161026–5002.

Comments Due: 5 p.m. ET 11/16/16.

Docket Numbers: ER17–183–000.

Applicants: Duke Energy Progress, LLC.

Description: § 205(d) Rate Filing: DEP–SEPA Amended RS No. 126 to be effective 12/31/2016.

Filed Date: 10/26/16.

Accession Number: 20161026–5030.

Comments Due: 5 p.m. ET 11/16/16.

Docket Numbers: ER17–184–000.

Applicants: SociVolta Inc.

Description: Baseline eTariff Filing: Baseline new to be effective 1/1/2017.

Filed Date: 10/26/16.

Accession Number: 20161026–5033.

Comments Due: 5 p.m. ET 11/16/16.

Docket Numbers: ER17–185–000.

Applicants: Upper Michigan Energy Resources Corporation.

Description: § 205(d) Rate Filing: UMERC to Alger Delta Rate Schedule No. 3 to be effective 1/1/2017.

Filed Date: 10/26/16.

Accession Number: 20161026–5041.

Comments Due: 5 p.m. ET 11/16/16.

Docket Numbers: ER17–186–000.

Applicants: Upper Michigan Energy Resources Corporation.

Description: § 205(d) Rate Filing: UMERC to Ontonagon Rate Schedule No 5 to be effective 1/1/2017.

Filed Date: 10/26/16.

Accession Number: 20161026–5042.

Comments Due: 5 p.m. ET 11/16/16.

Docket Numbers: ER17–187–000.

Applicants: Twin Eagle Resource Management, LLC.

Description: § 205(d) Rate Filing: Change in Category Status to be effective 12/27/2016.

Filed Date: 10/26/16.

Accession Number: 20161026–5056.

Comments Due: 5 p.m. ET 11/16/16.

Docket Numbers: ER17–188–000.

Applicants: Southern California Edison Company.

Description: Tariff Cancellation: Notices of Cancellation GIA & DSA SunEdison ? Terminal Freezers—Oxnard, Calif to be effective 12/26/2016.

Filed Date: 10/26/16.

Accession Number: 20161026–5081.

Comments Due: 5 p.m. ET 11/16/16.

Docket Numbers: ER17–189–000.

Applicants: Northern States Power Company, a Minnesota Corporation.

Description: § 205(d) Rate Filing: MP Maint Svcs Agrmt—628—0.0.0 to be effective 12/23/2016.

Filed Date: 10/26/16.

Accession Number: 20161026–5089.

Comments Due: 5 p.m. ET 11/16/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES17–6–000.

Applicants: National Grid USA, Nantucket Electric Company, The Narragansett Electric Company, Niagara Mohawk Power Corporation, New England Hydro-Transmission Electric, Inc., National Grid Generation LLC.

Description: Application of National Grid USA, on behalf of Nantucket Electric Company, et al., for Authority to Issue Securities.

Filed Date: 10/25/16.

Accession Number: 20161025–5129.

Comments Due: 5 p.m. ET 11/15/16.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–14–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Informational Compliance Filing regarding operational penalties of Midcontinent Independent System Operator, Inc. under OA08–14.

Filed Date: 10/24/16.

Accession Number: 20161024–5198.

Comments Due: 5 p.m. ET 11/14/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 26, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26441 Filed 11–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–184–000]

SociVolta Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of SociVolta Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is November 15, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 26, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26444 Filed 11–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–473–000]

Texas Eastern Transmission, LP; Notice of Schedule for Environmental Review of the Bayway Lateral Project

On June 29, 2016, Texas Eastern Transmission, LP (Texas Eastern) filed an application in Docket No. CP16–473–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Bayway Lateral Project (Project). The Project would transport an incremental volume of approximately 300,000 dekatherms per day from Texas Eastern's existing Line 38 to serve new commercial customers (the Linden Cogen Power Plant and the Phillips 66 Bayway Refinery).

On July 14, 2016, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA: November 23, 2016.

90-day Federal Authorization Decision Deadline: February 21, 2017.

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Texas Eastern proposes to construct, operate, and maintain new pipeline and aboveground facilities in the City of Linden, Union County, New Jersey. The Project would consist of the installation of approximately 2,300 linear feet of 24-inch-diameter pipeline connecting Texas Eastern's existing Line 38 to the Linden Cogen Power Plant and Phillips 66 Bayway Refinery. The Project also includes construction of one new fenced metering and regulating station on the Phillips 66-owned property adjacent to the Linden Cogen Power Plant.

Background

On August 5, 2016, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Bayway Lateral Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We received one comment in response to our NOI from the U.S. Environmental Protection Agency (EPA). The EPA suggested several additional environmental issues be addressed in the EA, including an analysis of air quality impacts; an evaluation of alternatives, including those outside FERC's jurisdiction; a comprehensive evaluation of cumulative, indirect, and secondary impacts; climate change adaptation; and environmental justice. Consolidated Rail Corporation also filed comments in response to the Notice of Application regarding railroad safety.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP16–473), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission,

such as orders, notices, and rule makings.

Dated: October 27, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–26419 Filed 11–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG17–16–000.

Applicants: 96WI 8me LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of 96WI 8me LLC.

Filed Date: 10/26/16.

Accession Number: 20161026–5183.

Comments Due: 5 p.m. ET 11/16/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–959–000.

Applicants: Southwest Power Pool, Inc.

Description: Report Filing: Tri-County Electric Cooperative Formula Rate Second Refund Report in ER12–959 to be effective N/A.

Filed Date: 10/26/16.

Accession Number: 20161026–5118.

Comments Due: 5 p.m. ET 11/16/16.

Docket Numbers: ER16–2234–001.

Applicants: EF Kenilworth LLC.

Description: Report Filing: Refund Report to be effective N/A.

Filed Date: 10/27/16.

Accession Number: 20161027–5099.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER16–2402–000; ER16–2403–000; ER16–2404–000.

Applicants: UGI Utilities Inc.

Description: Supplement to August 11, 2016 UGI Utilities Inc., et al. Triennial Market Power Analyses, et al.

Filed Date: 10/25/16.

Accession Number: 20161025–5055.

Comments Due: 5 p.m. ET 11/15/16.

Docket Numbers: ER16–2532–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2016–10–27_Amendment to filing to revise RPU Att O and Protocols to be effective 11/1/2016.

Filed Date: 10/27/16.

Accession Number: 20161027–5104.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER16–2558–001.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: Errata Filing to the E&P Agreements for Alamo Springs Solar 1 and 2 to be effective 9/8/2016.

Filed Date: 10/27/16.

Accession Number: 20161027–5003.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER16–2569–001.

Applicants: The Dayton Power and Light Company.

Description: Tariff Amendment: DP&L Supplemental Filing Response to Deficiency Letter to be effective 11/8/2016.

Filed Date: 10/27/16.

Accession Number: 20161027–5089.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER16–2570–001.

Applicants: AES Ohio Generation, LLC.

Description: Tariff Amendment: AES Ohio Supplemental Filing Response to Deficiency Letter to be effective 11/8/2016.

Filed Date: 10/27/16.

Accession Number: 20161027–5095.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER17–135–001.

Applicants: DesertLink, LLC.

Description: Tariff Amendment: Amendment to 1 to be effective 12/19/2016.

Filed Date: 10/27/16.

Accession Number: 20161027–5169.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER17–190–000.

Applicants: Wisconsin Public Service Corporation.

Description: § 205(d) Rate Filing: WPS Corp and Alger Delta Agreement for Wholesale Distribution Service to be effective 1/1/2017.

Filed Date: 10/27/16.

Accession Number: 20161027–5058.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER17–191–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–10–27_ATC Request for Updated Depreciation Rates to be effective 1/1/2017.

Filed Date: 10/27/16.

Accession Number: 20161027–5068.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER17–192–000.

Applicants: Northern Maine Independent System Administrator, Inc.

Description: § 205(d) Rate Filing: Normal Filing NMMR #10 to be effective 11/1/2016.

Filed Date: 10/27/16.

Accession Number: 20161027–5088.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER17–193–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–10–27_SA 2856 MidAmerican-MidAmerican 1st Rev GIA (J411) to be effective 10/28/2016.

Filed Date: 10/27/16.

Accession Number: 20161027–5105.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER17–194–000.

Applicants: Hartree Partners, LP.

Description: Baseline eTariff Filing: Administrative eTariff Filing to be effective 10/28/2016.

Filed Date: 10/27/16.

Accession Number: 20161027–5120.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER17–195–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–10–27 SA 1756 METC-Consumers Energy 10th Rev. GIA (G479B) to be effective 10/1/2016.

Filed Date: 10/27/16.

Accession Number: 20161027–5121.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER17–196–000.

Applicants: Pima Energy Storage System, LLC.

Description: Baseline eTariff Filing: Pima Energy Storage System, LLC Application for Market-Based Rates to be effective 10/28/2016.

Filed Date: 10/27/16.

Accession Number: 20161027–5141.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER17–197–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–10–27_SA 2966 ATC-Upper Michigan Energy Resources CFA to be effective 12/27/2016.

Filed Date: 10/27/16.

Accession Number: 20161027–5142.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER17–198–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–10–27_SA 2967 ATC-Upper Michigan Energy Resources D–TIA to be effective 12/27/2016.

Filed Date: 10/27/16.

Accession Number: 20161027–5143.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER17–199–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–10–27_SA 2968 ATC-Upper Michigan Energy Resources PSA to be effective 12/27/2016.

Filed Date: 10/27/16.

Accession Number: 20161027–5145.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER17–200–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: 3rd Quarter 2016 Update to OA and RAA Member Lists to be effective 9/30/2016.

Filed Date: 10/27/16.

Accession Number: 20161027–5153.

Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: ER17–201–000.

Applicants: Shell Energy North America (US), L.P.

Description: § 205(d) Rate Filing: Category 1 Seller Notice to be effective 10/28/2016.

Filed Date: 10/27/16.

Accession Number: 20161027–5158.

Comments Due: 5 p.m. ET 11/17/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26442 Filed 11–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–66–021]

Louisiana Public Service Commission and the Council for the City of New Orleans v. Entergy Services, Inc.; Notice of Compliance Filing

Take notice that on October 26, 2016, Entergy Services, Inc. submitted a compliance filing, pursuant to the Federal Energy Regulatory Commission's (Commission) September 26, 2016 Order.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on November 16, 2016.

Dated: October 27, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–26421 Filed 11–1–16; 8:45 am]

BILLING CODE 6717–01–P

[1] *La. Pub. Serv. Comm'n* v. *Entergy Corp.,* 156 FERC ¶ 61,220 (2016) (September 26 Order).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP17–53–000.

Applicants: National Fuel Gas Supply Corporation.

Description: § 4(d) Rate Filing: Settlement Rates 11/01/16 to be effective 11/1/2016.

Filed Date: 10/25/16.

Accession Number: 20161025–5012.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: RP17–54–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Conoco 2016) to be effective 11/1/2016.

Filed Date: 10/25/16.

Accession Number: 20161025–5054.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: RP17–55–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10/25/16 Negotiated Rates—Freepoint Commodities LLC (RTS) 7250–16 to be effective 11/1/2016.

Filed Date: 10/25/16.

Accession Number: 20161025–5058.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: RP17–56–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10/25/16 Negotiated Rates—Freepoint Commodities LLC (RTS) 7250–17 to be effective 11/1/2016.

Filed Date: 10/25/16.

Accession Number: 20161025–5059.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: RP17–57–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10/25/16 Negotiated Rates—Freepoint Commodities LLC (RTS) 7250–18 to be effective 11/1/2016.

Filed Date: 10/25/16.

Accession Number: 20161025–5061.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: RP17–58–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: ConocoPhillips Negotiated Rate to be effective 11/1/2016.

Filed Date: 10/25/16.

Accession Number: 20161025–5094.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: RP17–59–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Non-Conforming Negotiated Rate Agreement Filing (GIGO) to be effective 11/1/2016.

Filed Date: 10/25/16.

Accession Number: 20161025–5106.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: RP17–60–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10/25/16 Negotiated Rates—Consolidated Edison Energy Inc. (HUB) 2275–89 to be effective 11/1/2016.

Filed Date: 10/25/16.

Accession Number: 20161025–5108.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: RP17–61–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Tenaska Marketing Negotiated Rate to be effective 11/1/2016.

Filed Date: 10/25/16.

Accession Number: 20161025–5109.

Comments Due: 5 p.m. ET 11/7/16.

Docket Numbers: RP17–62–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10/25/16 Negotiated Rates—Mercuria Energy America, Inc. (HUB) 7450–89 to be effective 11/1/2016.

Filed Date: 10/25/16.

Accession Number: 20161025–5110.

Comments Due: 5 p.m. ET 11/7/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 26, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26443 Filed 11–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Order on Intent To Revoke Market-Based Rate Authority

Before Commissioners: Norman C. Bay, Chairman; Cheryl A. LaFleur, and Colette D. Honorable.

	Docket Nos.
Electric Quarterly Reports	ER02–2001–020
AP&G Holdings LLC	ER12–2430–000
Bargain Energy, LLC	ER14–1343–001
CES Placerita, Incorporated.	ER14–57–000
Crawfordsville Energy, LLC	ER15–631–001
DES Wholesale, LLC	ER12–1770–001
Dillon Power, LLC	ER15–1810–000
DownEast Power Company, LLC.	ER10–1304–002
Escanaba Green Energy, LLC.	ER12–2307–001
GearyEnergy, LLC	ER10–2817–000
LVI Power, LLC	ER12–2484–000
Madstone Energy Corp	ER11–4482–000
NiGen, LLC	ER15–567–001
R&R Energy, Inc	ER11–4711–002
Societe Generale Energy LLC.	ER11–2775–000
Tall Bear Group, LLC	ER12–2374–000
Western Reserve Energy Services, LLC.	ER13–1706–000

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (2012), and 18 CFR part 35 (2016), require, among other things, that all rates, terms, and conditions of jurisdictional services be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.[1]

2. The Commission requires sellers with market-based rate authorization to file Electric Quarterly Reports.[2] Commission staff's review of the Electric Quarterly Reports indicates that the following 16 public utilities with market-based rate authorization have failed to file their Electric Quarterly Reports: AP&G Holdings LLC, Bargain Energy, LLC, CES Placerita, Incorporated, Crawfordsville Energy, LLC, DES Wholesale, LLC, Dillon Power, LLC, DownEast Power Company, LLC, Escanaba Green Energy, LLC, GearyEnergy, LLC, LVI Power, LLC, Madstone Energy Corp, NiGen, LLC, R&R Energy, Inc., Societe Generale Energy LLC, Tall Bear Group, LLC, and Western Reserve Energy Services, LLC. This order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the date of issuance of this order.

3. In Order No. 2001, the Commission stated that,

> [i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.[3]

4. The Commission further stated that,

> [o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.[4]

5. Pursuant to these requirements, the Commission has revoked the market-based rate tariffs of market-based rate sellers that failed to submit their Electric Quarterly Reports.[5]

6. Sellers must file Electric Quarterly Reports consistent with the procedures set forth in Order Nos. 2001, 768[6] and 770.[7] The exact filing dates for Electric Quarterly Reports are prescribed in 18 CFR 35.10b (2016). As noted above, Commission staff's review of the Electric Quarterly Reports for the period

[1] *Revised Public Utility Filing Requirements,* Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reh'g denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filing,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing,* Order No. 2001–D, 102 FERC ¶ 61,334, *order refining filing requirements,* Order No. 2001–E, 105 FERC ¶ 61,352 (2003), *order on clarification,* Order No. 2001–F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements,* Order No. 2001–G, 120 FERC ¶ 61,270, *order on reh'g and clarification,* Order No. 2001–H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements,* Order No. 2001–I, FERC Stats. & Regs. ¶ 31,282 (2008). *See also Filing Requirements for Electric Utility Service Agreements,* 155 FERC ¶ 61,280 (2016) (order clarifying reporting requirements and updating data dictionary).

[2] *See Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public* Utilities, Order No. 816, FERC Stats. & Regs. ¶ 31,374 (2015), *order on reh'g,* Order No. 816–A, 155 FERC ¶ 61,188 (2016); *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 3, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g,* Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g,* Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel* v. *FERC,* 659 F.3d 910 (9th Cir. 2011), *cert. denied,* 133 S. Ct. 26 (2012).

[3] Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 222.

[4] *Id.* P 223.

[5] *See, e.g., Electric Quarterly Reports,* 80 FR 58,243 (Sep. 28, 2015); *Electric Quarterly Reports,* 79 FR 65,651 (Nov. 5, 2014).

[6] *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act,* Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g,* Order No. 768–A, 143 FERC ¶ 61,054 (2013).

[7] *Revisions to Electric Quarterly Report Filing Process,* Order No. 770, FERC Stats. & Regs. ¶ 31,338 (2012).

up to the first quarter of 2016 identified 16 public utilities with market-based rate authorization that failed to file Electric Quarterly Reports. Commission staff contacted or attempted to contact these entities to remind them of their regulatory obligations. Despite these reminders, the public utilities listed in the caption of this order have not met these obligations. Accordingly, this order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the issuance of this order.

7. In the event that any of the above-captioned market-based rate sellers has already filed its Electric Quarterly Reports in compliance with the Commission's requirements, its inclusion herein is inadvertent. Such market-based rate seller is directed, within 15 days of the date of issuance of this order, to make a filing with the Commission identifying itself and providing details about its prior filings that establish that it complied with the Commission's Electric Quarterly Report filing requirements.

8. If any of the above-captioned market-based rate sellers does not wish to continue having market-based rate authority, it may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel its market-based rate tariff.

The Commission orders:

(A) Within 15 days of the date of issuance of this order, each public utility listed in the caption of this order shall file with the Commission all delinquent Electric Quarterly Reports. If a public utility subject to this order fails to make the filings required in this order, the Commission will revoke that public utility's market-based rate authorization and will terminate its electric market-based rate tariff. The Secretary is hereby directed, upon expiration of the filing deadline in this order, to promptly issue a notice, effective on the date of issuance, listing the public utilities whose tariffs have been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Issued: October 27, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–26422 Filed 11–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–2–000]

National Fuel Gas Supply Corporation; Notice of Application

Take notice that on October 14, 2016, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed in Docket No. CP17–2–000, an application pursuant to section 7(b) of the Natural Gas Act and part 157 of the Commission's regulations requesting authorization to abandon its Heath Compressor Station and associated appurtenances located in Heath Township, Jefferson County, Pennsylvania, and to refunctionalize Line FM–92 from a transmission to gathering function, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this Application should be directed to Laura P. Berloth, Attorney for National Fuel, 6363 Main Street, Williamsville, New York 14221, or call at 716–857–7001.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commentary will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file

electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: 5:00 p.m. Eastern Time on November 17, 2016.

Dated: October 27, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–26420 Filed 11–1–16; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Items From Sunshine Act Meeting

October 27, 2016.

The following consent agenda has been deleted from the list of items scheduled for consideration at the Thursday, October 27, 2016, Open Meeting and previously listed in the Commission's Notice of October 20, 2016. The Consent Agenda has been adopted by the Commission.

* * * * *

Consent Agenda

The Commission will consider the following subjects listed below as a consent agenda and these items will not be presented individually:

1	MEDIA	*TITLE:* Communtiy Radio of Decorah, Postville and Northeast Iowa for a Construction Permit for New Low Power FM Broadcast Station KCOD–LP, Decorah, Iowa. *SUMMARY:* The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Wennes Communications Stations, Inc., and Decorah Broadcasting, Inc. regarding the grant of a construction permit for low-power FM station KCOD–LP.
2	MEDIA	*TITLE:* Open Arms Community of El Paso, Application to Construct a New Noncommercial Educational FM Station at Horizon City, Texas; Christian Ministries of El Paso, Inc., Application to Construct a New Noncommercial Educational FM Station at Horizon City, Texas, NCE October 2007 Window, MX Group 431. *SUMMARY:* The Commission will consider a Memorandum Opinion and Order concerning a Petition for Reconsideration and Petition for Reinstatement *Nunc Pro Tunc* and Application for Review regarding applications for new NCE construction permits in NCE MX Group 431.
3	GENERAL COUNSEL	*TITLE:* In the Matter of John Anderson on Request for Inspection of Records (FOIA Control No. 2014–295). *SUMMARY:* The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Warren Havens, which appealed two decisions by the Enforcement Bureau denying four Freedom of Information Act requests. The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by John Anderson, which appealed a decision by the Enforcement Bureau addressing his Freedom of Information Act request.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–26640 Filed 10–31–16; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10345—Habersham Bank, Clarksville, Georgia

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Habersham Bank, Clarksville, Georgia (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Habersham Bank on February 18, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: October 28, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–26481 Filed 11–1–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10499—Columbia Savings Bank, Cincinnati, Ohio

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10499 Columbia Savings Bank, Cincinnati, Ohio (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Columbia Savings Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds. Effective November 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: October 28, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–26480 Filed 11–1–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10299—WestBridge Bank and Trust Company, Chesterfield, Missouri

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for WestBridge Bank & Trust Company, Chesterfield, Missouri (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of WestBridge Bank and Trust Company on October 15, 2010. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: October 28, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–26482 Filed 11–1–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 2016.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *International Bancshares Corporation and IBC Subsidiary Corporation,* both of Laredo, Texas; to acquire International Bank of Commerce, Oklahoma City, Oklahoma.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Fentura Financial, Inc.,* Fenton, Michigan; to acquire 100 percent of Community Bancorp, Inc., and thereby indirectly acquire Community State Bank both of Saint Charles, Michigan.

Board of Governors of the Federal Reserve System, October 28, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–26470 Filed 11–1–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC is submitting the information collection requirements described below to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on proposed information requests to marketers of electronic cigarettes (''e-cigarettes''). The FTC proposes to issue compulsory process orders to up to 15 e-cigarette manufacturers, distributors, and marketers per year for information concerning, among other things, data on annual sales and marketing expenditures. The Commission intends to ask OMB for a three-year clearance to collect this information.

DATES: Comments on the proposed information requests must be received on or before December 2, 2016.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Electronic Cigarettes: Paperwork Comment, FTC File No. P14504,'' on your comment. File your comment online at *https://ftcpublic.commentworks.com/ftc/electroniccigarettespra2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Elizabeth Sanger or Rosemary Rosso, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission. Telephone: (202) 326–2757 (Sanger) or (202) 326–2174 (Rosso).

SUPPLEMENTARY INFORMATION:

I. Background

In the past few years, sales of e-cigarettes have grown rapidly in the United States.[1] These devices are available in both disposable and refillable models, in a range of nicotine strengths (including nicotine-free), and in a multitude of flavors. E-cigarettes are manufactured, distributed, and sold by a wide variety of industry members, ranging from large companies, including major U.S. tobacco companies, to small, single-location operators. They can be

[1] These products are most commonly referred to as e-cigarettes, but sometimes also are referenced as vape pens, personal vaporizers, e-hookah, and electronic nicotine delivery systems. This information collection would cover all such products, regardless of how they are referenced.

purchased at conventional retail stores, at ''vape shops,'' which are retail stores that primarily or exclusively sell e-cigarettes, and online.

For many years, the Commission has published reports on sales and marketing expenditures by the major cigarette and smokeless tobacco manufacturers. These data allow the agency to analyze industry sales and assess how industry members allocate their promotional activities and expenditures. The data also provide information to policymakers and public health researchers that, in many instances, is not available from other sources. Given their increasing prevalence, the Commission believes it is important and necessary for the agency to begin collecting information about e-cigarette sales and marketing activities. The Commission intends to publish a report with the data it obtains,[2] and to issue similar information requests regularly in order to track trends over time. The information will be sought using compulsory process under Section 6(b) of the Federal Trade Commission Act, 15 U.S.C. 46(b).

The Commission intends to issue information requests to up to 15 industry members, including larger and smaller entities, and will seek information about the different types of e-cigarette products marketed, certain characteristics of those products, and information about marketing expenditures for broad categories of media. While the data may not represent overall sales and marketing activities for the entire e-cigarette industry, the information provided should provide a valuable snapshot of the current e-cigarette market, including its major players. Because the number of separately incorporated companies affected by the Commission's requests will exceed nine entities, the Commission is seeking OMB clearance under the PRA before requesting any information from the industry members.[3] On October 27, 2015, as required by the PRA, the FTC published a **Federal Register** Notice seeking comments from the public concerning the proposed collection of information from e-cigarette marketers. *See* 80 FR 65758 (''October 2015 Notice''). As discussed below, 37 comments were received.

Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while requesting that the OMB grant the clearance for the proposed collection of information. All comments should be filed as prescribed in the Request for Comment part below, and must be received on or before December 2, 2016.

II. Public Comments

The FTC received 37 comments in response to the October 2015 Notice.[4] Of these, 20 comments expressly supported and substantively addressed the proposed data collection. A joint comment favoring the proposal was submitted by the following public health organizations: American Academy of Pediatrics; the American Heart Association; Campaign for Tobacco-Free Kids; Tobacco Control Legal Consortium; and Truth Initiative (''Joint Public Health Comment''). Comments supporting the proposal also were received from three individual public health or public interest organizations.[5] Favorable substantive comments were submitted by three government-related entities or individuals: National Association of Attorneys General Tobacco Committee (''NAAG''); the Oregon Public Health Division; and the Comptroller of the City of New York; and from three academic centers involved in public health and tobacco control issues.[6] Ten individuals, many involved in local health education or tobacco control activities, filed individual comments supporting the data collection.[7]

Five comments were received from industry members: R.J. Reynolds Vapor Company and RAI Services Company (''Reynolds''); Altria Client Services Inc. and Nu Mark LLC (''Altria''); Rock River Manufacturing, the tobacco products manufacturing division of Ho-Chunk, Inc. (''Ho-Chunk''); (4) Fontem US, Inc. (''Fontem''), and (5) Logic Technology Development LLC (''Logic''). None of these comments expressly opposed the proposed data collection, although two companies questioned whether the data collection was premature given the then-pending FDA deeming regulation that, among other provisions, asserts regulatory authority over e-cigarettes and other tobacco products.[8] Each industry comment made suggestions that it asserted would enhance the quality, utility, and clarity of the information to be collected and reduce the burden on the respondents.

The remaining 12 comments did not substantively address the proposed data collection.

A. General Support for the Data Collection

In its October 2015 Notice, the FTC sought comments regarding whether the proposed collection is necessary.[9] Many of the comments stated that the data collection would provide important information, especially given the increased use of e-cigarettes by youth,[10] and the limited availability of data on e-cigarette advertising and marketing from other sources.[11] The Joint Public Health Comment stated that the collected data could provide valuable information and insights into the e-cigarette market and be used as a basis for public policy decisions. The UNC comment stated that the data collection would enable public health professionals to better understand where e-cigarette advertising and marketing dollars are being spent, and to help develop specific interventions to prevent underage use. The UCSF comment stated that the reports would enable retrospective assessment of advocacy activities and policy changes.

A number of comments made favorable comparisons between the proposed collection of information on e-cigarette sales and marketing expenditures and the FTC's existing reports on cigarettes and smokeless tobacco, noting that the existing reports are widely used by public health

[2] The report would not disclose any company-specific confidential data.

[3] Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each ''collection of information'' they conduct or sponsor if posed to ten or more entities within any twelve-month period. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

[4] *See https://www.ftc.gov/policy/public-comments/initiative-626.*

[5] Comments by Campaign for Tobacco-Free Kids (''CTFK''); American Lung Association; and Truth In Advertising, Inc.

[6] Comment by Georgia State University Tobacco Center of Regulatory Science (''Georgia State''); Comment by Glantz, et al., University of California, San Francisco Tobacco Center for Regulatory Science and Center for Tobacco Control Research and Education (''UCSF''); and Comment by Ribisl et al., University of North Carolina Gillings School of Global Public Health (''UNC'').

[7] Comments by K. Miloski (Riverhead Community Awareness Program); L. Rotolo (TFAC); S. Hills; D. Moore (Tobacco Free Action Committee); S. Fischer; A. Zanatta (Jewish Community Center); K. Keenan (Roswell Park Cancer Institute), M. James (POW'R Against Tobacco); J. DiFranza; and T. Cain (Anderson Aconee Behavioral Health).

[8] FDA has since issued its final regulation: *Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products* (''Deeming Regulation''), 81 FR 28974 (May 10, 2016).

[9] *See* 80 FR 65758 at 65759.

[10] *See, e.g.,* Joint Public Health Comment; comments from CTFK; UCSF; and Oregon Public Health Division.

[11] *See, e.g.,* Joint Public Health Comment; comments from CTFK; UNC; and Georgia State.

professionals, researchers, policymakers, and government agencies.[12] These comments stated that expansion of data collection to e-cigarettes is needed to inform these same stakeholders about the nature and extent of e-cigarette advertising and marketing practices, and to allow them to monitor trends.[13]

The FTC believes that these information requests are in the public interest and essential to the agency's performance of its authority to investigate and report publicly on industry practices that affect the economic well-being of consumers. Consistent with the agency's information collection for cigarettes and smokeless tobacco products, the data will also provide important information for researchers and policymakers.

B. Utility of the Information Collection

The FTC's October 2015 Notice also sought comment on whether the proposed data collection is necessary for the proper performance of the functions of the FTC, including whether the information will be practically useful.[14] The NAAG comment stated that the data collection would greatly facilitate state efforts to better understand and effectively regulate e-cigarettes. The Joint Public Health Comment and the Georgia State comment noted that the FTC's report would facilitate research into e-cigarette marketing because it would provide access to data that are otherwise unavailable from commercial sources, which tend to focus on larger companies and traditional distribution channels such as convenience stores. The UCSF comment states that scholarly research of e-cigarette marketing would be best served by reliable data, such as data collected directly from members of the e-cigarette market. Individual public health educators commented that a report on e-cigarette sales and marketing would facilitate their local and state health education work, which in turn informs evidence-based policymaking and regulatory action.[15] One drug prevention specialist stated that a report on e-cigarette sales and marketing expenditures would also inform advocacy work and counter-marketing strategies to discourage youth and other vulnerable populations from using e-cigarettes.[16]

One industry member, Ho-Chunk, questioned whether the value of the proposed data collection could be outweighed by the risk that a negative public perception of e-cigarettes would damage the growth of the industry. The company expressed concern that the FTC's data collection could send a premature message that the industry is engaged in predatory marketing or that there are as-yet-unknown health and safety risks associated with the use of these products.

The Commission intends to use the data collection to provide useful baseline information (starting with 2015 data) concerning sales of the various e-cigarette products and allow the Commission to analyze how industry members allocate their promotional activities and expenditures across various media. The data also will provide researchers and policymakers with sales and marketing information that will assist their research and regulatory efforts. The Commission does not believe that the data collection itself will create any negative public perception of e-cigarettes or damage the growth of the industry. In particular, the proposal seeks sales and marketing expenditure data only and does not include an inquiry into any hypothetical predatory practices or health or safety information. In addition, the data collection here is very similar in content and methodology to studies that the Commission for many years has undertaken with respect to other markets, including cigarettes and smokeless tobacco products (OMB Control No. 3084–0134); alcoholic beverages (OMB Control No. 3084–0138); and food (OMB Control No. 3084–0139).

C. Suggestions To Improve the Information Collection

In its October 2015 Notice, the FTC invited comments concerning ways to enhance the quality, utility, and clarity of the information to be collected.[17] The FTC received substantive comments for enhancing its proposed data collection as follows: (1) Expand the scope of the proposed data collection by collecting data from a broad cross-section of market participants and increasing the number of surveyed entities; (2) collect and report data on a state-by-state basis; (3) collect and report sales data that are segmented by product type, differentiates product characteristics such as flavors and nicotine strength, that include data on refills and cartridges, and that report sales data separately from product give-aways; and (4) collect and report broad categories of marketing expenditure data.

1. Scope of the Data Collection

The Commission's October 2015 Notice anticipated collecting and reporting data obtained from as many as 15 entities that would vary in size, in the number of products sold, and in the extent and variety of their advertising and marketing.[18] A number of comments recommended that the Commission expand the scope of the data collection by including a broad cross-section of market participants, including distributors and entities whose products are sold in traditional retail stores (*e.g.,* convenience stores), as well as online sellers, and vape shops. To accomplish this goal, some commenters recommended that the Commission increase the number of entities from whom it would collect data.

a. Type of Market Participant. A wide range of commenters, including both industry and public health organizations and researchers, recommended that the Commission expand the scope of the proposed data collection by including a broad cross-section of market participants in the entities surveyed through the data collection. Logic recommended that the FTC seek a broader cross-section of the market. Fontem commented that vape shops comprise a large percentage of the market, and noted that the data collection would not be meaningful if vape shops were not included. Altria also suggested that the FTC send data requests to a selection of vape shops. Reynolds recommended that the Commission differentiate the information requests by type of market participant, reasoning that such segmentation would present less need for highly differentiated sales and marketing data. The Joint Public Health Comment recommended that the FTC survey a selection of large companies, as well as a geographically dispersed selection of e-cigarette manufacturers, distributors, and retailers (including online sellers and vape shops) in order to get a cross-section of market participants. The UNC comment recommended that the proposed data collection differentiate the method of sale (distributors, online, retail) so that subsequent enforcement efforts can be tailored appropriately. Georgia State and one individual also recommended that the Commission differentiate by method of sale. Another individual recommended that the data requests segment market participants into two

[12] *See, e.g.,* Joint Public Health Comment; comments from Oregon Public Health Division; M. James; D. Moore; S. Fisher; S. Hills; and L. Rotolo.

[13] *See, e.g.,* comment from CTFK.

[14] 80 FR 65758 at 65759.

[15] *See, e.g.,* comments by L. Rotolo and M. James.

[16] *See* comment by T. Cain.

[17] 80 FR 65758 at 65759.

[18] *Id.* at 65760.

groups: Those that sell only e-cigarette products and those that sell e-cigarettes and other tobacco products.

The Commission agrees that seeking data from a broad cross-section of the overall market, including distributors to conventional retail sellers, online sellers, and vape shops, would provide a fuller perspective on the overall e-cigarette market. However, the Commission was not able to find sufficient, reliable market data that would permit it to identify and select which smaller online sellers and vape shops should receive data requests. The available data from which the Commission could identify a sample of online sellers or vape shops are so limited and insufficient that any separate samples of these sellers would at best provide anecdotal information.

In contrast, the available market data do permit a reliable sample of the largest e-cigarette marketers and some online sellers. The Commission believes that a sample of these companies will account for at least 80 percent of the conventional retail market and a sizable share of the online market. Thus, the data will provide useful information concerning at least this large subset of the overall market. At the same time, the Commission remains interested in collecting and reporting sales and marketing expenditure data from a broader cross-section of the market. Should more reliable market data become available, the Commission may seek OMB clearance to collect sales and marketing expenditure data for a broader cross-section of companies at such time, and would report on the data received.

b. Number of Entities Submitting Data. To capture data from a broad cross-section of market participants, several commenters recommended that the Commission collect data from more than 15 entities, the number identified in the October 2015 Notice. Altria recommended increasing the number beyond 15 entities given industry fragmentation and the increased market presence of vape shops. Reynolds questioned whether data collection from 15 entities would be sufficient to allow the FTC to characterize overall market sales and marketing activities. Logic stated that the proposed data collection was under-inclusive because too few companies would be required to report data. The Georgia State and Truth In Advertising comments stated that expanding the data collection beyond 15 entities would provide a fuller perspective and more accurate representation of the overall market. The Joint Public Health Comment also recommended that the FTC send data requests to more than 15 entities.

As discussed above, reliable data permitting the Commission to identify a representative sample of a broad cross-section of the market do not appear to be available at this time. As a result, the Commission does not believe it necessary to increase the number of entities from whom it will seek to collect and report data.

2. State-By-State Data Collection

The FTC's October 2015 Notice asked whether the agency should seek data on state-by-state sales of e-cigarettes.[19] Altria recommended that the Commission consider conducting a state-by-state analysis given the highly fragmented nature of the overall market. Comments from public health organizations and research centers also supported state-by-state data collection for sales and, in some comments, also for marketing expenditures.[20] The UNC comment noted that reporting state-by-state data would help tobacco control professionals understand which states and regions have the greatest sales, and help them target their tobacco control efforts accordingly. The Oregon Public Health Division and Georgia State comments noted that state-by-state data would be useful in evaluating the impact of state and local regulatory efforts. Reynolds opposed state-by-state data collection, stating that such data were not readily available for e-cigarettes sold through distributors who sell such products in more than one state. Reynolds further stated that there are no efficient and reliable means to obtain state-by-state data.

Although the Commission agrees that state-by-state data collection could provide useful information, such data collection would significantly increase the complexity and burden of the data requests and might not be readily practical for some e-cigarette sellers. Thus, the Commission has decided against requesting approval for state-by-state data collection at this time. The Commission remains interested in this issue, however, and could request OMB clearance to collect state-by-state data in the future.

3. Collection of Sales Data

a. Type of Product. A number of commenters noted the wide variety of different e-cigarette products currently marketed. Reynolds noted that three general categories of e-cigarette products are currently available: (1) Disposable products, (2) rechargeable and pre-filled cartridge products, and (3) ''tank'' products that require the user to put e-liquid into an aerosol-generating device. The Joint Public Health Comment recommended that the Commission require responders to report separately by product type.[21] The UNC comment also supported separate reporting by product type, noting that separate reporting can be useful to track changes in popularity and use. Similarly, the UCSF comment supported separate reporting as a means to help evaluate how changes in sales of different products correspond to changes in use.

Reynolds recommended against differentiating by product type, noting that the different products generally could be categorized by the retail market where the products are sold, with conventional retail stores selling disposable and rechargeable products, and ''vape stores'' selling tank products. Reynolds preferred categorizing by type of marketer rather than type of product.

Given the wide variety of products available, the Commission believes that separate reporting by product type will be useful and important in tracking future developments in the e-cigarette market. Thus, the proposed data collection contemplates separate reporting across three categories: (1) Non-refillable (*i.e.,* disposable) products; (2) refillable closed systems (*i.e.,* rechargeable and refillable cartridge products); and (3) refillable open systems (*i.e.,* ''tank'' systems).

b. Differentiation by Flavors. Comments from public health organizations, research centers, and health educators recommended that the Commission seek sales data that are differentiated by their various characterizing flavors.[22] The Joint Public Health Comment stated that flavors appear to be one of the reasons youth and adults try e-cigarettes. The CTFK comment stated that the available data suggest that flavors are a key reason youth try and use e-cigarettes, citing the 2013–2014 Population Assessment of Tobacco and Health (''PATH'') study, which showed that most youth smoked flavored e-cigarettes when they first tried the product and during the past month. The comment also cited data

[19] 80 FR 65758 at 65759.

[20] *See* Joint Public Health Comment, recognizing that certain marketing expenditures made on a national level could not be reported on a state-by-state basis. *See also* comments from Oregon Public Health Division; UNC; Georgia State; UCSF; and T. Cain.

[21] Other commenters also supported separate reporting generally. *See* comments from CTFK; American Lung Ass'n; NAAG; L. Rotolo; and S. Fisher.

[22] *See* Joint Public Health Comment, and comments from CTFK; American Lung Ass'n; NAAG; UNC; UCSF; Georgia State; M. James; and L. Rotolo.

from the PATH study indicating that surveyed youth reported ''comes in flavors that I like'' as one of the reasons they used e-cigarettes. The Georgia State comment stated that data differentiated by flavors would help regulators and the public health community determine the role flavors play in patterns or reasons for use, perceptions of harm, and social norms.

Reynolds and Fontem opposed the collection of detailed flavor data. Fontem noted that there is no standardized method of reporting flavors across the industry, and both stated that characterizing flavors is subjective. Reynolds stated that the utility of seeking flavor data is not clear.

Given the potential importance of flavors for trial and use of e-cigarettes, especially among youth, the Commission will seek to collect data that differentiate among flavors. However, as discussed *infra* at section II.D.2, to reduce the burden, the proposed data collection will designate only three flavor categories, rather than requiring companies to report each flavor individually.

c. Differentiation by Nicotine Strength. The comments from public health organizations, research centers, and NAAG supported the collection of data on nicotine content levels. The Georgia State comment indicated that research suggests nicotine levels are related to patterns or reasons for use. The CTFK comment stated that e-cigarettes contain highly variable amounts of nicotine, and there are no reliable data providing information about nicotine strength. The UNC comment indicated that information about nicotine strength could be valuable for determining equivalence to conventional tobacco products and for consideration of potential long-term health risks. The UCSF comment noted that nicotine content data could facilitate the testing of competing hypotheses as to the effect of nicotine regulation on use.

Fontem and Reynolds opposed collection of data concerning nicotine strength. Fontem commented that collection of nicotine content data would not be useful because there is no standardized method of reporting nicotine content across the industry. Reynolds also questioned whether nicotine content data would provide useful information.

The Commission believes that collection of data concerning nicotine strength will provide useful information that is not readily available from other sources. The agency does not believe that the lack of a standardized reporting method invalidates the utility of these data. The FTC will take into account the various comments received in the course of developing its report on the data collection.

d. Cartridges and Refills. Several commenters addressed the Commission's request for comments on the collection of data concerning refills, especially with regard to refillable products sold with more than one refill unit. E-cigarette products, other than disposable products, are often marketed to consumers with the device, battery, atomizer, and one or more refill units sold together in a single package. The Joint Public Health Comment stated that any cartridge or liquid unit above one should be counted as a refill, regardless of whether it is packaged as part of the same stock keeping unit (''SKU'') or sold individually. Fontem stated that there is no consistency among marketers as to blister packs or refills that come in a single package. Thus, Fontem questioned whether gathering information on refills would yield meaningful information. The company recommended that if the Commission opted to track refills, that it simply track the total number of refills. Reynolds recommended that for products sold with more than one cartridge, the FTC should abide by the product configuration as sold to consumers, *i.e.,* allow companies to use the SKUs for reporting. Reynolds stated that relying on existing SKUs would allow responders to use existing records to produce data and, thus, would be simpler and clearer.

On balance, requiring companies to report the total number of refill units will provide a more accurate picture of e-cigarette sales. Thus, if an e-cigarette product is sold with more than one cartridge or e-liquid unit, each cartridge or unit above one should be reported as a refill. Likewise, each cartridge or e-liquid unit sold individually also would count as a refill. In addition, the Commission believes this approach is consistent with the approach it has taken with regard to the collection of sales data for other tobacco products. For example, if three pouches of smokeless tobacco are packaged together as a single unit for sale to consumers, the Commission's compulsory process orders have required a responding company to report each pouch separately, for a total of three units.

e. Sales and Give-Aways. Comments from public health organizations and research centers generally supported the collection of data on both sales and give-aways and the reporting of these data separately.[23] CTFK noted that currently only limited data are available concerning market size and that current estimates do not differentiate between sales and give-aways.[24] The UNC comment stated that collecting sales and give-away data and reporting those data separately is important for evaluating which products are most frequently purchased, and the Georgia State comment noted that reporting the data separately more accurately reflects market transactions. The UCSF comment stated that give-aways are important to identify separately given their potential to reach youth under the age of 18.

The Commission agrees that data on sales and give-aways should be collected and reported separately given the distinct role each plays in the overall market. In addition, the agency collects and reports data on sales and give-aways separately in its data collection for cigarettes and smokeless tobacco products and, therefore, separate collection and reporting will be consistent with the approach taken for these other tobacco products.

4. Collection of Marketing Data

A number of comments supported data collection for the various media specifically identified in the FTC's October 2015 Notice, as well as other marketing channels.[25] The NAAG comment stated that collection and reporting of broad categories of marketing expenditure data would be useful not only to the public but also to state officials who are assessing regulatory options and enforcement efforts.

The Joint Public Health Comment and the CTFK comment stated that it is important to collect marketing expenditures for television, radio, and other broadcast media, noting that unlike cigarettes and smokeless tobacco products, no statutory broadcast ban applies to e-cigarettes. Several

[23] *See* Joint Public Health Comment; *see also* comments from CTFK; UNC; UCSF; Georgia State; American Lung Ass'n; and NAAG.

[24] The CTFK comment and the Joint Public Health Comment also noted that collecting data on give-aways was especially important because at the time there were no national restrictions on free sampling. These comments noted that such restrictions would not take effect until FDA issued its final Deeming Regulation that, among other things, asserted jurisdiction over e-cigarettes and other tobacco products. As noted *supra* note 7, FDA has now issued its Deeming Regulation. As a result of this regulation, the national ban on the distribution of free samples will apply to all tobacco products. 90 FR 28974 at 29054; 21 CFR 1140.16(d). The prohibition on free sampling took effect on August 8, 2016. 90 FR 28974 at 28976.

[25] *See, e.g.,* Joint Public Health Comment; comments from CTFK; Oregon Public Health Division; American Lung Ass'n; and NAAG.

comments specifically noted the importance of collecting and reporting data for marketing expenditures for media especially attractive to youth, such as point-of-sale advertising,[26] sponsorship of concerts and other events as well as sports teams or individual athletes or drivers,[27] and celebrity endorsers.[28] Several comments specifically identified product placement as a category where marketing expenditures should be collected and reported,[29] with the Joint Public Health Comment noting that expenditures for all forms of product placement should be collected, including product placement expenditures for broadcast media, movies, digital, and other media. The Georgia State comment supported detailed data collection for web-based and social media marketing expenditures, noting that availability of these data from commercial data sources is limited. Fontem recommended that the FTC include couponing as a category of marketing expenditures; the UCSF and Georgia State comments likewise identified coupons as well as other forms of price promotion as categories where the Commission should collect marketing expenditure data.

Reynolds recommended that the data collection focus on the marketing expenditure categories already used by the FTC in its data collection for cigarettes and smokeless tobacco products, noting that the Commission has decades of experience collecting those data. One individual commenter also recommended that the Commission seek and report the same categories of marketing expenditure data tracked for cigarettes and smokeless tobacco products in order to facilitate comparisons.[30]

The Commission agrees that collecting and reporting data for broad categories of marketing expenditures will be useful, including data concerning traditional and newer media, product placement, sponsorship, endorsements, and price promotions. The agency will seek to collect marketing data in categories that generally track those used for cigarettes and smokeless tobacco products, with two primary differences. First, the Commission will seek to collect and report data for marketing expenditures on broadcast media such as television and radio because, unlike cigarettes and smokeless tobacco products, no statute prohibits using these media to advertise and market e-cigarettes. Second, some of the categories have been updated to explicitly recognize newer forms of media now used for advertising and marketing, such as digital and social media.

D. Suggestions To Minimize the Burden of the Information Collection

The Commission's October 2015 Notice invited comments on ways to minimize the burden of the collection of information on entities required to respond to the data requests.[31]

1. Defer Data Collection Until Issuance of FDA Final Deeming Regulation

Reynolds and Fontem suggested that the Commission defer its data collection until after FDA issued its final Deeming Regulation. Reynolds noted that the final regulation would clarify the scope and impact of FDA's regulation of e-cigarettes. As noted above, FDA issued its final regulation on May 10, 2016. There is no overlap between FDA's regulation and the proposed data collection. Accordingly, it is not necessary to defer the data collection.

2. Categorize Product Flavors and Nicotine Strength

As discussed above, the Commission plans to collect data concerning e-cigarette flavors and nicotine strength. To reduce the burden of reporting each individual flavor, the Joint Public Health comment and comments from CTFK and the American Lung Association recommended that companies report three categories of flavors: Tobacco, menthol/mint, and other. The Joint Public Health comment stated that these three categories would most easily capture the breadth of flavors available, and make it easier for the industry and the FTC to count all the flavors. CTFK noted that categorizing in this manner would also eliminate the overlap that might result from more limited flavor categories. Comments from UCSF and NAAG, on the other hand, stated that the Commission should collect data on each individual flavor. Given the variety and number of different flavors, the Commission believes that classifying e-cigarettes into three categories of flavors—tobacco, menthol/mint, and other—will provide useful information while significantly reducing the burden on reporting companies, and will use these categories in the data collection, if approved.

The Joint Public Health Comment and the CTFK comment also indicated that reporting nicotine strength by categories might be sufficient and would reduce the reporting burden on responding entities. The UCSF comment, on the other hand, recommended that the Commission require companies to report each different nicotine strength. Categorizing nicotine strengths would require consultation with scientific authorities to determine the appropriate categories for reporting. In addition, reporting in categories could blur trends over time due to inherent imprecision. Thus, the Commission plans to require reporting for each individual nicotine strength sold by the reporting entity, rather than for categories. Once the Commission has these data, it will consider how best to organize and discuss them in the course of developing its report.

3. Narrow Scope of Data Requests by Requiring Less Specificity

Reynolds and Fontem each recommended that the Commission require less detail in the data requests as a means of reducing the burden of responding, and suggested that the collection of certain information might not be useful. Fontem suggested that the Commission not seek information concerning product flavors, nicotine strength, or blister packs and refills. The company suggested that if the Commission did decide to collect flavor data, it require only two categories of information: Tobacco and other. It also suggested that if the agency decided that some information about refills was needed, it simply track total number of refills sold. Reynolds suggested that the Commission model its requests on the information requests for cigarettes and smokeless tobacco products, and not require differentiation by type of product, nicotine concentration, size, method of sale, and flavors. If the Commission opted to seek information about flavors, Reynolds recommended that the agency request data based on brand style names and descriptions the product manufacturers created to describe their products. For the reasons discussed above, the Commission believes that the information collection should include information concerning flavors, nicotine strength, refill units, and other product characteristics. Collection of flavor information by broad categories, rather than individually, will reduce the burden on responding to the information requests.

[26] *See, e.g.,* Joint Public Health Comment.

[27] *See, e.g.,* Joint Public Health Comment, comments from Oregon Public Health Division and NYC Office of the Comptroller.

[28] *See, e.g.,* comments from Oregon Public Health Division and NYC Office of the Comptroller.

[29] *See, e.g.,* Joint Public Health Comment, comments from CTFK and Oregon Public Health Division.

[30] Comment by J. DiFranza.

[31] 80 FR 65758 at 65759.

4. Limit Information Collection to Age Screening and Ad Content Review

In its comment, Logic proposed that the Commission limit its information collection to data applicable to: (1) Youth access and (2) illegal, inaccurate, or deceptive advertising claims about e-cigarettes. According to Logic, these two areas address the relevant societal issues for information collection, consistent with the FTC's mandate to prevent unfair or deceptive business practices. Logic stated that collecting substantial data concerning sales and marketing expenditures would represent a substantial burden and, thus, suggested that the Commission confine the information sought to companies' age-screening mechanisms and to production of their advertising campaigns for review to ensure they are not making deceptive claims. The Commission disagrees with limiting the data collection to these two categories of information. Rather, broader information collection about sales and marketing expenditures is in the public interest, because it will allow the Commission to analyze sales and assess how industry members allocate their promotional activities and expenditures. For decades, the Commission has collected and reported information about sales and marketing expenditures for other tobacco products, as well as for other consumer products, and the e-cigarette information requests are consistent with the data collection and reporting for those products. Although the Commission agrees that preventing false and deceptive advertising is an important component of its consumer protection mission, law enforcement action against specific marketers, rather than information collection, is a better means of addressing potentially unfair or deceptive e-cigarette advertising.

E. Age-Screening Mechanisms

In its October 2015 Notice, the Commission anticipated that its data collection requests would include seeking information concerning efforts such as age-screening mechanisms to prevent youth from being exposed to advertising and promotion of e-cigarettes or from obtaining free product samples. One industry member, Logic, supported data collection regarding age-verification methods, stating that many online sellers use no age-verification methods at all while conventional retail stores require rigorous age-verification. The Joint Public Health comment, and comments from CTFK, Georgia State, UCSF, and one individual, also supported data collection for this category, with Georgia State and UCSF also specifying age verification for online purchases. The Georgia State comment noted that data collection and reporting for this category would be useful to determine whether more stringent regulatory action was needed.

The Commission agrees that data concerning age-verification methods would be useful, and plans to collect and report data concerning age-screening mechanisms to prevent youth from being exposed to e-cigarette advertising and promotion or from obtaining free product samples.

F. Accuracy of Estimated Burden of the Information Collection

The Commission's October 2015 Notice invited comments on the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.[32] The Commission estimated a per company average of 200 hours for each recipient of an information request for the first year, and a per company average of 150 hours for the remaining years. Thus, the total hours burden for 15 information requests was estimated to be 3,000 hours for the first year, and 2,250 for each of the subsequent two years, for a total of 7,500 hours. The Commission estimated that the total labor costs for 15 information requests to be $300,000 for the first year, and $225,000 for each of the subsequent two years, for a total of $750,000. This estimate assumed an average $100/hour wage, which is the same estimated wage average used in the Commission's recent request for reauthorization of information requests to cigarette and smokeless tobacco companies.

The comment from Reynolds asserted that the Commission had underestimated the total hours burden. The company stated that it usually takes it twice as long as the FTC's estimated time burden to compile information for similar data collections for cigarette and smokeless tobacco companies. Reynolds also stated that the FTC should include in its estimate the amount of time companies will need to communicate directly with Commission staff when seeking clarification regarding the data collection. Reynolds and Fontem commented that the FTC's labor cost estimate also underestimates the total burden costs, stating that an average wage of $100/hour was too low. Neither company, however, provided an alternative figure or other information indicating what a more accurate hourly labor cost should be.

The Commission believes that its estimate burdens with respect to both average hours and labor costs are reasonable, especially in the absence of more specific information to calculate estimates that are more precise. However, out of an abundance of caution, the Commission has revised its burden estimate from that stated in the October 2015 Notice by increasing its estimated hours burden by 50 percent. As revised, the Commission calculates a per company average of 300 hours for the first year, and 225 hours for each of the two remaining years, resulting in a cumulative total of 11,250 hours for 15 information requests over three years. The Commission has not changed is average hourly cost estimate. The Commission's estimate is based on the assumption that the labor costs will include varying compensation levels among staff, management, and legal review, with most work performed by non-legal staff. In the absence of more precise data, the Commission believes that the same $100/hour wage that it used in its recent application for reauthorization of information requests to cigarette and smokeless tobacco companies is appropriate here as well. As discussed *infra,* however, the total cost burden will increase due to the increase in the estimated hours burden.

G. Other Comments

The Joint Public Health Comment and the comments from CTFK and American Lung Association recommended that the Commission coordinate its data collection with FDA. The American Lung Association stated that coordination might be mutually beneficial for both agencies, and CTFK indicated that coordination might help assure consistency in measures. Altria also encouraged the Commission to consider how it would interact with FDA once the Deeming Regulation was issued. The FTC staff and FDA staff already have a long tradition of working together on tobacco issues and the many other areas where the two agencies share jurisdiction. The FTC staff expects that tradition will continue. To the extent that coordination is required for specific issues concerning the proposed information collection, the agencies already have processes and procedures in place to address those issues.

The Georgia State comment recommended that the FTC require detailed brand-specific information, noting that the Commission's reports for cigarettes and smokeless tobacco products report aggregated rather than brand-specific data. The UCSF comment also recommended that the Commission collect and report brand-specific data.

[32] 80 FR 65758 at 65759.

The Commission's compulsory process orders to surveyed companies will collect brand-specific data. However, because Section 6(f) of the FTC Act, 15 U.S.C. 46(f), protects confidential commercial information that is submitted to the Commission, the agency cannot publicly identify sales and marketing data for particular brands or companies that is not already public. Thus, the Commission's report on the data collection will provide aggregated rather than brand-specific data.

Commenters also recommended that the Commission seek more detailed differentiation of certain marketing expenditure data. The Joint Public Health Comment recommended that the Commission obtain data concerning the demographic composition of social media networks. The UCSF comment suggested collecting data regarding the amounts spent for different population subgroups, specific information concerning the time when marketing activities occurred, and requiring each responding company to identify its top three outlets and top three marketing programs within each media category. The added detail would significantly increase the complexity and burden of responding to the information requests. In addition, as indicated above, the Commission cannot publicly identify sales and marketing data on particular brands or companies and, thus, would not be able to include the specific data in its report. Thus, the Commission will not seek to include these data in the proposed information requests.

The Georgia State comment recommended that the Commission collect data on e-cigarette device specifications and capabilities. The comment indicated that this information would permit assessment of product differences concerning characteristics such as nicotine delivery, patterns of use, and puff topography. Collection of these data, however, is beyond the scope of the information requests' purpose.

Fontem's comment recommended that the Commission review e-cigarettes as smoking cessation devices and that it expand the information requests in order to collect data on other smoking cessation products, such as nicotine patches. This suggestion is beyond the scope of the proposed information collection, which concerns sales and marketing data for e-cigarette products, not products intended to treat nicotine addiction, which is the intended use for smoking cessation products. Whether any product is approved for use as a smoking cessation product is a question within the jurisdiction of FDA, not the FTC.

As noted earlier, the FTC received twelve comments that did not address the proposed data collection. One individual raised concerns that some e-cigarette marketers were making false claims that the products were effective for smoking cessation, and four individuals indicated that e-cigarettes helped with smoking cessation. Three individuals called for regulation of e-cigarettes, which FDA's recent issuance of its Deeming Regulation accomplishes. One individual stated that e-cigarettes should not be available to persons under the age of 18. FDA's Deeming Regulation prohibits the sale (both in-person and online) of e-cigarettes and other tobacco products to persons under the age of 18.[33] One individual commented that e-cigarette advertisements seem to be targeted to youth. One individual commented that the FTC should consider that a substantial portion of the e-cigarette market is for cannabis e-cigarette products rather than tobacco. Finally, one commenter asked the FTC to keep public health at the forefront of its decision-making.

III. Information Requests to the E-Cigarette Industry

The Commission proposes to send information requests to the ultimate U.S. parent entities of up to 15 e-cigarette marketers in the United States. These companies will vary in size, the number of products sold, and in the extent and variety of their advertising and marketing activities, and will include the largest marketers of e-cigarettes. As noted above, based on available market data, the Commission estimates its sample will account for more than 80 percent of the conventional retail market and a sizable portion of the online market.

The proposed information requests will seek sales data about the types and variety of e-cigarette products sold. The sales information will be reported under three broad categories: (1) Non-refillable (*i.e.,* disposable) products; (2) refillable closed systems (*i.e.,* rechargeable and pre-filled cartridge products); and (3) refillable open systems (*i.e.,* ''tank'' systems). Within these three categories, companies will report data differentiated by the strength of nicotine content and three categories of flavors: Tobacco, menthol/mint, and other. Data will be reported separately for sales and give-aways. The information requests will collect data for both unit sales as well as by net sales revenues. Data on net sales revenues will be reported by flavor only.

The information requests also will seek information and data concerning advertising and marketing activities and expenditures in a broad variety of media categories, including: (1) Radio, television, and print advertising; (2) Web site, digital, and social media marketing; (3) product placement; (4) endorsements, including celebrity endorsements; (5) sponsorship of concerts and other events and as well as of sports teams or individual athletes such as racing car drivers; (6) distribution of free samples; and (7) price promotions, including couponing programs. These expenditure categories generally track those used by the FTC in its data collections for cigarettes and smokeless tobacco products, with two exceptions. First, the proposed information requests will seek data concerning television and radio expenditures, since e-cigarette advertising is not subject to statutory broadcast media prohibitions. In addition, the media categories have been updated to provide more differentiation among online and digital advertising media.

The proposed information requests also will include information about company policies pertaining to age-screening mechanisms to prevent youth from being exposed to e-cigarette advertising and promotion or from obtaining free samples of e-cigarettes.

IV. Burden Estimates and Confidentiality

A. Estimated Hours Burden: 11,250 Hours

FTC staff's estimate of the hours burden is based on the time that would be required to respond to the Commission's information requests. The FTC currently anticipates sending information requests to as many as 15 e-cigarette companies each year. Because the Commission anticipates that these companies will vary in size, in the number of products they sell, and in the extent and variety of their advertising and promotion, and given the currently evolving nature of the e-cigarette industry, FTC staff has not calculated separate burden estimates for large and small companies, as is traditionally the case for the Commission's cigarette and smokeless tobacco information requests. For example, an e-cigarette marketer with a large volume of sales but a relatively small product line could potentially require fewer resources to respond to the Commission's information request than a marketer with lower overall sales but a

[33] 90 FR at 28974 at 29103; 21 CFR 1140.14. This provision took effect on August 8, 2016.

substantially larger product line that offers consumers a greater range of flavor and nicotine options. Rather than account for each potential permutation of factors, FTC staff has calculated a per company average at the upper limit of this potential range. Some companies likely will require less time to compile their responses.

The Commission anticipates that even if it provides models for the Excel datafiles the companies will be required to submit, recipients of its information requests will need substantial time to prepare a response the first time. Once an e-cigarette marketer has prepared its first response to a Commission information request, however, it will need less time in subsequent years to prepare its reports because it will know what information it will be required to produce, and will already have a template for its submission.

Accordingly, as an approximation, FTC staff assumes a per company average of 300 hours for each recipient of the Commission's information requests the first year they have to comply with the Commission's information request. Staff anticipates that in subsequent years, the per company average will be 225 hours. Thus, the overall estimated burden for 15 recipients of the information requests is 4,500 hours for the first year and 3,375 hours for each of the two subsequent years, or a total of 11,250 hours. Thus, the average yearly burden, over the course of a prospective three-year clearance, is 3,750 hours, or 250 hours per recipient (large and small). These estimates include any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent company that has received the information request.

B. Estimated Cost Burden: $1,125,000

Commission staff cannot calculate with precision the labor costs associated with these data requests, as they entail varying compensation levels of management and/or support staff among companies of different sizes. FTC staff assumes that computer analysts and other non-legal staff will perform most of the work involved in responding to the information requests, although legal personnel will likely be involved in reviewing the actual submission to the Commission. FTC staff believes that the same $100 per hour wage that it used in its recent request for reauthorization of information requests to the major cigarette and smokeless tobacco manufacturers is appropriate here also for the combined efforts of these individuals. Using this figure, FTC staff's best estimate for the total labor costs for 15 information requests is $450,000 (4,500 hours × $100 per hour) for the first year and $337,000 for the two subsequent years (3,375 hours × $100 per hour × 2), for a total of $1,125,000 over the entire three-year period. The annualized labor cost per respondent will average approximately $25,000.

Staff believes that the capital or other non-labor costs associated with the information requests are minimal. Although the information requests may necessitate that industry members maintain the requested information provided to the Commission, they should already have in place the means to compile and maintain business records.

C. Confidentiality

Section 6(f) of the FTC Act, 15 U.S.C. 46(f), bars the Commission from publicly disclosing trade secrets or confidential commercial or financial information it receives from persons pursuant to, among other methods, special orders authorized by Section 6(b) of the FTC Act. Such information also would be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(4). Moreover, under Section 21(c) of the FTC Act, 15 U.S.C. 57b–2(c), a submitter who designates a submission as confidential is entitled to ten days' advance notice of any anticipated public disclosure by the Commission, assuming that the Commission has determined that the information does not constitute Section 6(f) material. Although materials covered under one or more of these various sections are protected by stringent confidentiality constraints, the FTC Act and the Commission's rules authorize disclosure in limited circumstances (*e.g.,* official requests by Congress, requests from other agencies for law enforcement purposes, and administrative or judicial proceedings). Even in those limited contexts, however, the Commission's rules may afford protections to the submitter, such as advance notice to seek a protective order in litigation. *See* 15 U.S.C. 57b–2; 16 CFR 4.9–4.11.

Finally, the information presented in the report will not reveal company-specific data, except data that are public. *See* 15 U.S.C. 57b–2(d)(1)(B). Rather, the Commission anticipates providing information on an anonymous or aggregated basis, in a manner sufficient to protect individual companies' confidential information, to provide a factual summary of e-cigarette industry marketing activities and sales.

V. Instructions for Submitting Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 2, 2016. Write ''Electronic Cigarettes: Paperwork Comment, FTC File No. P114504'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential'' as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).[34] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the

[34] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/electroniccigarettespra2,* by following the instructions on the web-based form. When this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Electronic Cigarettes: Paperwork Comment, FTC File No. P114504'' on your comment and on the envelope. You can mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 2, 2016. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *http://www.ftc.gov/ftc/privacy.htm.*

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5806.

David C. Shonka,

Acting General Counsel.

[FR Doc. 2016–26486 Filed 11–1–16; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0161; Docket 2016–0053; Sequence 37]

Information Collection; Reporting Purchases From Sources Outside the United States

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning reporting purchases from sources outside the United States.

DATES: Submit comments on or before January 3, 2017.

ADDRESSES: Submit comments identified by Information Collection 9000–0161, Reporting Purchases from Sources Outside the United States, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching for ''9000–0161; Reporting of Purchases from Outside the United States''. Select the link ''Submit a Comment'' that corresponds with ''9000–0161; Reporting of Purchases from Outside the United States''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and 9000–0161; Reporting of Purchases from Outside the United States'' on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0161.

Instructions: Please submit comments only and cite IC 9000–0161, in all correspondence related to this case. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 or via email at *cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The information on place of manufacture was formerly used by each Federal agency to prepare a report to Congress required by 41 U.S.C. 8302(b)(1) for FY 2009 through 2011 on acquisitions of articles, materials, or supplies that are manufactured outside the United States. However, the data is still necessary for analysis of the application of the Buy American statue and the trade agreements and for other reports to Congress. Additionally, contracting officers require this data as the basis for entry into the Federal Procurement Data System for further data on the rationale for purchasing foreign manufactured items.

B. Annual Reporting Burden

Number of respondents: 482,150.

Responses per respondent: 10.

Total annual responses: 1,483,592.

Hours per response: 0.01.

Total response burden hours: 14,836.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control Number 9000–0161, Reporting Purchases from Sources Outside the United States, in all correspondence.

Dated: October 27, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2016–26396 Filed 11–1–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10632]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: The necessity and utility of the proposed information collection for the proper performance of the agency's functions; the accuracy of the estimated burden; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by January 3, 2017.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10632 Evaluating Coverage to Care (C2C)

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Evaluating Coverage to Care (C2C); *Use:* CMS OMH has contracted with the RAND Corporation to evaluate From Coverage to Care (C2C). From the beginning of the Affordable Care Act's implementation, the Centers for Medicare & Medicaid Services, Office of Minority Health (CMS OMH) recognized that achieving better health and reduced health care costs would require individuals to take an active role in their health care and regularly use primary and preventive care services. To address this need, CMS OMH launched From Coverage to Care (C2C) in June 2014. C2C was designed to help consumers understand what it means to have health insurance coverage, how to find a provider, when and where to seek appropriate health services, and why prevention and partnering with a provider is important for achieving optimal health. It was also designed to equip health care providers and stakeholders in the community who support consumers' connection to care with the tools needed to promote consumer engagement and to promote changes in the health care system that improve access to care. As part of C2C, CMS produced a range of consumer-oriented materials, both web-based and in print. The most in-depth of the print materials is an eight-step booklet titled ''A Roadmap to Better Care and a Healthier You.'' Based on the need for the information to be communicated in smaller, more digestible packets, booklets were developed to correspond to each of the eight steps. Four of the most popular pages of the Roadmap have been made available as single-page handouts for easier distribution. These materials are currently available in eight languages, including English, Spanish, Arabic, Chinese, Haitian Creole, Korean, Russian, and Vietnamese.

Since the national launch in 2014, CMS has disseminated C2C through speaking engagements, webinars, and meetings sponsored by CMS regional offices. CMS fills product orders and recently completed a redesign of the C2C Web site. C2C has grown to address emerging needs of consumers, as well as stakeholders or organizations that work with and support consumers, across the full continuum of health insurance and care: Plan selection, enrollment, finding a provider, and engaging in care over time.

RAND spent the past year designing and preparing for this evaluation to assess C2C's impact on consumer health insurance literacy and care utilization. This evaluation will also help CMS understand how C2C is spread within a community and disseminated to consumers, and in turn how best to

maximize C2C's impact. The next three years will be dedicated to implementing the evaluation described in this submission. We are proposing four data collection activities: (1) A cross-sectional survey of organizations that have ordered and used the materials with consumers; (2) A cross-sectional survey of consumers, drawn from the Knowledge Networks panel, to measure the association between C2C and consumer knowledge and behavior; (3) semi-structured interviews with staff from a limited set of community organizations as part of a case study; and (4) focus groups of consumers as part of a case study. The case study will be conducted in a community where English is not the preferred language, and where C2C materials in another language (*e.g.,* Spanish, Arabic, Chinese, Haitian Creole, Korean, Russian, and Vietnamese) were used with consumers. *Form Number:* CMS–10632 (OMB control number: 0938-New); *Frequency:* Occasionally; *Affected Public:* Individuals or Households; *Number of Respondents:* 3,460; *Total Annual Responses:* 3,460; *Total Annual Hours:* 1,176. (For policy questions regarding this collection contact Ashley Peddicord-Austin at 410–786–0757).

Dated: October 28, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–26493 Filed 11–1–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0117]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by December 2, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0670. Also include the FDA docket number found in brackets in the heading of this document.

Guidance for Industry on Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims; OMB Control Number 0910–0670—Extension

This guidance is intended to assist applicants in developing labeling for outcome claims for drugs that are indicated to treat hypertension. With few exceptions, current labeling for antihypertensive drugs includes only the information that these drugs are indicated to reduce blood pressure; the labeling does not include information on the clinical benefits related to cardiovascular outcomes expected from such blood pressure reduction. However, blood pressure control is well established as beneficial in preventing serious cardiovascular events, and inadequate treatment of hypertension is acknowledged as a significant public health problem. FDA believes that the appropriate use of these drugs can be encouraged by making the connection between lower blood pressure and improved cardiovascular outcomes more explicit in labeling. The intent of the guidance is to provide common labeling for antihypertensive drugs except where differences are clearly supported by clinical data. The guidance encourages applicants to submit labeling supplements containing the new language.

The guidance contains two provisions that are subject to OMB review and approval under the PRA and one provision that would be exempt from OMB review:

1. Section IV.C of the guidance requests that the CLINICAL STUDIES section of the Full Prescribing Information of the labeling should include a summary of placebo or active-controlled trials showing evidence of the specific drug's effectiveness in lowering blood pressure. If trials demonstrating cardiovascular outcome benefits exist, those trials also should be summarized in this section. Table 1 in Section V of the guidance contains the specific drugs for which FDA has concluded that such trials exist. If there are no cardiovascular outcome data to cite, one of the following two paragraphs should appear:

''There are no trials of [DRUGNAME] or members of the [name of pharmacologic class] pharmacologic class demonstrating reductions in cardiovascular risk in patients with hypertension,'' or ''There are no trials of [DRUGNAME] demonstrating reductions in cardiovascular risk in patients with hypertension, but at least one pharmacologically similar drug has demonstrated such benefits.''

In the latter case, the applicant's submission generally should refer to table 1 in section V of the guidance. If the applicant believes that table 1 is incomplete, it should submit the clinical evidence for the additional information to Docket No. FDA–2008–D–0150. The labeling submission should reference the submission to the docket. FDA estimates that no more than one submission to the docket will be made annually from one company, and that each submission will take approximately 10 hours to prepare and submit. Concerning the recommendations for the CLINICAL STUDIES section of the Full Prescribing Information of the labeling, FDA regulations at §§ 201.56 and 201.57 (21 CFR 201.56 and 201.57) require such labeling, and the information collection associated with these regulations is approved by OMB under OMB control number 0910–0572.

2. Section VI.B of the guidance requests that the format of cardiovascular outcome claim prior approval supplements submitted to FDA under the guidance should include the following information:

- A statement that the submission is a cardiovascular outcome claim supplement, with reference to the guidance and related Docket No. FDA–2008–D–0150.
- Applicable FDA forms (*e.g.,* 356h, 3397).
- Detailed table of contents.
- Revised labeling to:
  - Include draft revised labeling conforming to the requirements in §§ 201.56 and 201.57 and
  - include marked-up copy of the latest approved labeling, showing all additions and deletions, with annotations of where supporting data (if applicable) are located in the submission.

FDA estimates that approximately 1 cardiovascular outcome claim supplement will be submitted annually from approximately 1 different companies, and that each supplement will take approximately 20 hours to

prepare and submit. The guidance also recommends that other labeling changes (*e.g.,* the addition of adverse event data) should be minimized and provided in separate supplements, and that the revision of labeling to conform to §§ 201.56 and 201.57 may require substantial revision to the ADVERSE REACTIONS or other labeling sections.

3. Section VI.C of the guidance states that applicants are encouraged to include the following statement in promotional materials for the drug.

''[DRUGNAME] reduces blood pressure, which reduces the risk of fatal and nonfatal cardiovascular events, primarily strokes and myocardial infarctions. Control of high blood pressure should be part of comprehensive cardiovascular risk management, including, as appropriate, lipid control, diabetes management, antithrombotic therapy, smoking cessation, exercise, and limited sodium intake. Many patients will require more than one drug to achieve blood pressure goals.''

The inclusion of this statement in the promotional materials for the drug would be exempt from OMB review based on 5 CFR 1320.3(c)(2), which states that the public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within the definition of collection of information.

In the **Federal Register** of February 22, 2016 (81 FR 8726), we published a 60-day notice requesting public comment on the proposed extension of this collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Submission to Docket No. FDA–2008–D–0150	1	1	1	10	10
Cardiovascular Outcome Claim Supplement Submission	1	1	1	20	20
Total					30

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26399 Filed 11–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–D–0369]

Animal Drug User Fees and Fee Waivers and Reductions; Draft Revised Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft revised guidance for industry (GFI) #170 entitled ''Animal Drug User Fees and Fee Waivers and Reductions.'' This draft revised guidance document describes the types of fees the Food and Drug Administration (FDA or the Agency) is authorized to collect under the Animal Drug User Fee Act of 2003 (ADUFA), as amended, and how to request waivers and reductions from these fees.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft revised guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft revised guidance by January 3, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2004–D–0369 for ''Animal Drug User Fees and Fee Waivers and Reductions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The

Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft revised guidance document.

FOR FURTHER INFORMATION CONTACT: Diane Heinz, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5692, *diane.heinz@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft revised GFI #170 entitled ''Animal Drug User Fees and Fee Waivers and Reductions.'' This draft revised guidance document describes the types of fees FDA is authorized to collect under ADUFA and how to request waivers and reductions from these fees. It clarifies the criteria for Barrier to Innovation waivers, clarifies the procedures for Small Business waivers, and makes additional clarifying changes.

II. Significance of Guidance

This level 1 draft revised guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft revised guidance, when finalized, will represent the current thinking of FDA on ''Animal Drug User Fees and Fee Waivers and Reductions.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This draft revised guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information referred to in the guidance entitled ''Animal Drug User Fees and Fee Waivers and Reductions'' have been approved under OMB control number 0910–0540.

IV. Electronic Access

Persons with access to the Internet may obtain the draft revised guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: October 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26406 Filed 11–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0797]

Agency Information Collection Activities; Proposed Collection; Comment Request; Human Tissue Intended for Transplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by December 2, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0302. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Human Tissue Intended for Transplantation—21 CFR Part 1270

OMB Control Number 0910–0302—Extension

Under section 361 of the Public Health Services Act (42 U.S.C. 264), FDA issued regulations under part 1270 (21 CFR part 1270) to prevent the transmission of human immunodeficiency virus, hepatitis B, and hepatitis C through the use of human tissue for transplantation. The regulations provide for inspection by FDA of persons and tissue establishments engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue. These facilities are required to meet provisions intended to ensure appropriate screening and testing of human tissue donors and to ensure that records are kept documenting that the appropriate screening and testing have been completed.

Section 1270.31(a) through (d) requires written procedures to be prepared and followed for the following steps: (1) All significant steps in the infectious disease testing process under § 1270.21; (2) all significant steps for obtaining, reviewing, and assessing the relevant medical records of the donor as prescribed in § 1270.21; (3) designating and identifying quarantined tissue; and (4) for prevention of infectious disease contamination or cross-contamination by tissue during processing. Section 1270.31(a) and (b) also requires recording and justification of any deviation from the written procedures.

Section 1270.33(a) requires records to be maintained concurrently with the performance of each significant step required in the performance of infectious disease screening and testing of human tissue donors. Section 1270.33(f) requires records to be retained regarding the determination of the suitability of the donors and of the records required under § 1270.21. Section 1270.33(h) requires all records to be retained for at least 10 years beyond the date of transplantation if known, distribution, disposition, or expiration of the tissue, whichever is the latest. Section 1270.35(a) through (d) requires specific records to be maintained to document the following: (1) The results and interpretation of all required infectious disease tests; (2) information on the identity and relevant medical records of the donor; (3) the receipt and/or distribution of human tissue, and (4) the destruction or other disposition of human tissue.

Respondents to this collection of information are manufacturers of human tissue intended for transplantation. Based on information from the Center for Biologics Evaluation and Research's (CBER's) database system, FDA estimates that there are approximately 383 tissue establishments, of which 262 are conventional tissue banks and 121 are eye tissue banks. Based on information provided by industry, there are estimated totals of 2,141,960 conventional tissue products and 130,987 eye tissue products distributed per year with an average of 25 percent of the tissue discarded due to unsuitability for transplant. In addition, there are an estimated 29,799 deceased donors of conventional tissue and 70,027 deceased donors of eye tissue each year.

Accredited members of the American Association of Tissue Banks (AATB) and Eye Bank Association of America (EBAA) adhere to standards of those organizations that are comparable to the recordkeeping requirements in part 1270. Based on information provided by CBER's database system, 90 percent of the conventional tissue banks are members of AATB ($262 \times 90\% = 236$), and 95 percent of eye tissue banks are members of EBAA ($121 \times 95\% = 115$). Therefore, recordkeeping by these 351 establishments ($236 + 115 = 351$) is excluded from the burden estimates as usual and customary business activities (5 CFR 1320.3(b)(2)). The recordkeeping burden, thus, is estimated for the remaining 32 establishments, which is 8.36 percent of all establishments ($383 - 351 = 32$, or $32/383 = 8.36\%$).

FDA assumes that all current tissue establishments have developed written procedures in compliance with part 1270. Therefore, their information collection burden is for the general review and update of written procedures estimated to take an annual average of 24 hours, and for the recording and justifying of any deviations from the written procedures under § 1270.31(a) and (b), estimated to take an annual average of 1 hour. The information collection burden for maintaining records concurrently with the performance of each significant screening and testing step and for retaining records for 10 years under § 1270.33(a), (f), and (h) include documenting the results and interpretation of all required infectious disease tests and results and the identity and relevant medical records of the donor required under § 1270.35(a) and (b). Therefore, the burden under these provisions is calculated together in table 1. The recordkeeping estimates for the number of total annual records and hours per record are based on information provided by industry and FDA experience.

In the **Federal Register** of June 6, 2016 (81 FR 36310), we published a 60-day notice requesting public comment on the proposed extension of this collection of information. No comments were received.

FDA estimates the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per ecordkeeper	Total annual records	Average burden per recordkeeping	Total hours
1270.31(a), (b), (c), and (d) [2]	32	1	32	24	768
1270.31(a) and 1270.31(b) [3]	32	2	64	1	64
1270.33(a), (f), and (h), and 1270.35(a) and (b)	32	6,198.84	198,363	1	198,363
1270.35(c)	32	11,876.12	380,036	1	380,036
1270.35(d)	32	1,484.50	47,504	1	47,504
Total					626,735

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Review and update of standard operating procedures (SOPs).
[3] Documentation of deviations from SOPs.

Dated: October 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26398 Filed 11–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Science Board to the Food and Drug Administration Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Science Board to the Food and Drug Administration. The Science Board provides advice to the Commissioner of Food and Drugs and other appropriate officials on specific, complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice to the Agency on keeping pace with technical and scientific developments including in regulatory science, input into the Agency's research agenda and on upgrading its scientific and research

facilities and training opportunities. It will also provide, where requested, expert review of Agency sponsored intramural and extramural scientific research programs. The meeting will be open to the public.

DATES: The meeting will be held on November 15, 2016, from 8:30 a.m. until 5 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503, Section C), Silver Spring, MD 20993. For those unable to attend in person, the meeting will also be Web cast. The link for the Web cast is available at *https://collaboration.fda.gov/sbm1116/.* Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Rakesh Raghuwanshi, Office of the Chief Scientist, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3309, Silver Spring, MD 20993, 301–796–4769, *rakesh.raghuwanshi@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The Science Board will hear about: (1) The Center for Biologics Evaluation and Research's strategic goals for regulatory science; (2) a progress update on FDA's Opioid Action Plan and the Bovine Heparin Initiative; (3) a response from the Office of Scientific Professional Development to the Science Board's report on the Commissioner's Fellowship Program; (4) a report from the Scientific Engagements Subcommittee; (5) and a report from the Food Emergency Response Network Cooperative Agreement Program Evaluation Subcommittee.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 8, 2016. Oral presentations from the public will be scheduled between approximately 4 p.m. and 5 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 2, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 4, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Rakesh Raghuwanshi at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 28, 2016.

Janice M. Soreth,

Acting Associate Commissioner, Special Medical Programs.

[FR Doc. 2016–26491 Filed 11–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than December 2, 2016.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Telehealth Outcome Measures OMB No. 0915–0311—Revision.

Abstract: To help carry out its mission, the Office for the Advancement of Telehealth (OAT) created a set of performance measures that grantees use to evaluate the effectiveness of their services programs and monitor their progress through the use of performance reporting data.

Need and Proposed Use of the Information: As required by the Government Performance and Results Act of 1993, all federal agencies must develop strategic plans describing their overall goal and objectives. HRSA's

Federal Office of Rural Health Policy (FORHP), OAT, has worked with its grantees to develop performance measures to be used to evaluate and monitor the progress of the grantees. Grantee goals are as follows: To improve access to needed services, reduce rural practitioner isolation, improve health system productivity and efficiency, and improve patient outcomes. In each of these categories, specific indicators were designed and are reported through a performance monitoring Web site. These measures cover the principal topic areas of interest to FORHP. The data are used for program improvement and grantees use the data for performance tracking and improvement. Revisions include minor additions to the OAT Performance Improvement Measurement System (PIMS) to capture minimal data on access to care, population demographics, insurance status, quality improvement and clinical measures.

Likely Respondents: Telehealth Network Grantees.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
PIMS	200	2	400	7	2,800
Total	200		400		2,800

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–26402 Filed 11–1–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Ryan White HIV/AIDS Program Core Medical Services Waiver Application Requirements

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than January 3, 2017.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Ryan White HIV/AIDS Program Core Medical Services Waiver Application Requirements.

OMB No. 0915–0307—Extension.

Abstract: Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Ryan White HIV/AIDS Program), Part A section 2604(c), Part B section 2612(b), and Part C section 2651(c), requires that grantees expend 75 percent of Parts A, B, and C funds on core medical services, including antiretroviral drugs for individuals with HIV, identified and eligible under the legislation. For grantees under Parts A, B, and C to be exempted from the 75 percent core medical services requirement, they must request and receive a waiver from HRSA, as required in the Act.

On October 25, 2013, HRSA published revised standards for core medical services waiver requests in the **Federal Register** (78 FR 63990). These revised standards allow grant recipients flexibility to adjust resource allocation based on the current situation in their local environment. These standards ensure that grant recipients receiving waivers demonstrate the availability of core medical services, including antiretroviral drugs, for persons with HIV served under Title XXVI of the PHS Act. The core medical services waiver uniform standard and waiver request process will apply to Ryan White HIV/AIDS Program Grant Awards under Parts A, B, and C of Title XXVI of the PHS Act. Core medical services waivers will be effective for a 1-year period that is consistent with the grant recipient award period. Grant recipients may submit a waiver request before the annual grant application, with the application, or up to 4 months after the grant recipient award has been made.

Need and Proposed Use of the Information: HRSA uses the documentation submitted in core medical services waiver requests to determine if the applicant/grant recipient meets the statutory requirements for waiver eligibility including: (1) No waiting lists for AIDS Drug Assistance Program services; and (2) evidence of core medical services availability within the grant recipient's jurisdiction, state, or service area to all individuals with HIV identified and eligible under Title XXVI of the PHS Act. See sections 2604(c)(2), 2612(b)(2), and 2651(c)(2) of the PHS Act.

Likely Respondents: Ryan White HIV/AIDS Program Part A, B, and C grant recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized burden hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Waiver Request	20	1	20	5.5	110
Total	20	1	20	5.5	110

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–26408 Filed 11–1–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Organization and Functional Statement; Part GFG; California Area Office; Proposed Functional Statement

Part G, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), as amended most recently at 63 FR 1486, January 9, 1998, is hereby amended to reflect a realignment of the California Area Indian Health Service.

The California Area Indian Health Service (CAIHS) provides the healthcare delivery system to the State of California, the home of the largest population of American Indians/Alaska Natives (AI/AN) in the country. According to the 2010 Census, California's Indian population was 333,346 in 2010. The 2010 Census also indicated that there were 294,216 additional people who stated that they were American Indian and a combination of one or more other races. California is home to 107 Federally-recognized Tribes. There are presently 31 California Tribal health programs operating 57 ambulatory clinics under the authority of the Indian Self-Determination Act. The IHS funds ten California Area urban health programs that operate under the authority of the Indian Health Care Improvement Act. In fiscal year 2014, California Tribal health programs had 119,362 registered users and 69,238 active users. Registered users are a cumulative total for all Indian patients ever seen at Tribal facilities, and active users are those that have accessed care during the past three years. None of the Tribal facilities and programs currently operating in California originated as facilities previously operated by the IHS, as is the case in other IHS areas. Population sizes and dispersion of Tribal groups in the CAIHS makes it unlikely that a hospital-based service program will develop within the area, similar to other IHS areas where the Federal government has built, staffed and maintained hospitals and satellite clinics on Indian reservations. Tribal programs will continue to rely on private and public hospitals to meet inpatient and emergency needs. Some Tribal health program physicians have privileges at local hospitals and follow their patients through the local hospital system. Otherwise, the patients are referred to private physicians using Purchased Referred Care (PRC) funding, as well as other alternate resources. Most programs have not developed laboratory, pharmacy or x-ray specialties, so these services are purchased from the private sector through PRC funding or other Tribal resources. The CAIHS is proposed to be organized as follows:

Office of the Area Director (GFGA)

Provides overall direction and leadership for the CAIHS by: (1) Encouraging maximum consultation and participation by California area Tribes and Tribal and urban Indian organizations in establishing the goals, objectives and development of policies of the CAIHS; (2) coordinating the CAIHS activities and resources internally and externally with those of other Federal, state, local and privately funded health care programs to maximize quality health care services to Tribal and urban Indians in the State of California; (3) ensuring compliance to the IHS guidelines and administrative procedures pertinent to Indian self-determination contracting processes and Tribal self-governance compacting; (4) assuring that Indian Tribes and Indian organizations are informed regarding pertinent health policy and program management issues and coordinates meetings and other communications with Tribal delegations; (5) advocating for the health needs and concerns of AI/AN; (6) developing and demonstrating methods and techniques for continuous improvement of health services management and delivery by California area Tribes and Tribal and urban Indian organizations; (7) ensuring that the principles of Equal Employment Opportunity laws and the Civil Rights Act are applied in the management of the human resources of the CAIHS; (8) advising the Director, IHS, of issues and potential issues, relevant to the California area, or to the IHS in general, and recommending and participating in actions to prevent or correct problems; (9) providing leadership for the development of emergency preparedness plans, policies, and services, including the continuity of operations plans, deployment, public health infrastructure, and emergency medical services for the CAIHS responsibilities; and (10) advocating and coordinating support for Tribal emergency medical services programs, including training and equipment.

Office of Management Support (GFGAB)

(1) Provides advice to the Area Director and functional area managers on CAIHS administrative and management policy and procedures requirements, delegations of authority, documenting the organizations and functions of the CAIHS, personnel administration and management, and agency agreements management; (2) develops, recommends and implements processes for management accountability and the periodic assessment of managerial performance; (3) provides guidance and support to area managers regarding resources, personal property, acquisition management; (4) provides a full complement of administrative services in support of the Area-wide health services delivery and management systems, *i.e.,* forms management, travel management, communications management, supply management, printing, mail management, etc.; (5) advises the Area Director and functional area managers on the civil service and commissioned corps personnel programs' administration and management requirements; (6) directs the personnel security and suitability clearance, and other ethics in employment programs; and (7) provides advice, consultation, and assistance to Tribal officials and Tribal organizations on Tribal health program personnel policy issues.

Financial Management Division (GFGAB1)

(1) Performs fund reconciliations and assists in coordination of discrepancies with financial officials; (2) provides support and technical assistance to area operational components in the development of area operations budgets; (3) provides fund certification and maintains commitment registers for area components; (4) supports cost accounting activities in IHS; (5) develops and implements budget, fiscal, and accounting procedures and conducts reviews and analyses to ensure compliance in budget activities in collaboration with Headquarters officials and the Tribes; and (6) participates in cross-cutting issues and processes including, but not limited to emergency preparedness/security, budget formulation, self-determination issues, Tribal shares computations, and resolution of audit findings as may be needed and appropriate.

Acquisition Management Division (GFGAB2)

(1) Develops, recommends, and oversees the implementation of policies, procedures and delegations of authority for the acquisition management activities in the CAIHS, consistent with applicable regulations, directives, and guidance from higher echelons in the Department of Health and Human Services and Federal oversight agencies; (2) provides advice, technical consultation, and training to California area managers and staff; (3) reviews and makes recommendations for approval/disapproval of contract-related documents such as: Pre- and post-award documents, unauthorized commitments, procurement planning documents, Justification for Other Than Full and Open Competition, waivers, and deviations; (4) executes and administers contracts for the CAIHS; and (5) reviews, recommends, and issues delegations of acquisition authority in the CAIHS.

Office of Public Health (GFGAC)

(1) Provides leadership and consultation to Tribal and urban public health programs on the IHS goals, objectives, policies, program standards, and priorities; (2) serves as the primary source of technical and policy advice to the Area Director, area office staff, and Tribal and urban health program officials on the full scope of clinical health care programs, including their quality assurance and preventive aspects, and tort claims; (3) participates in identifying and articulating the health needs of the AI/AN population in the State of California; (4) coordinates the availability and accessibility of Medicare and Medicaid programs, and other managed care programs' services, to AI/AN in the State of California; (5) provides consultation and technical support to Tribal and urban public health programs including, but not limited to, dental services, diabetes and other chronic disease prevention, nutrition services, and nursing services, alcohol/substance abuse prevention and treatment, including the coordination of the Youth Regional Treatment Center services; (6) provides assistance in the development and implementation of area policy and procedures regarding managed care services, third-party collections and reimbursements, health care facility accreditation, risk management and quality assurance; (7) coordinates the reimbursement of allowable costs for qualified high cost PRC service cases from the IHS Catastrophic Health Emergency Fund to Tribal health care programs in the State of California; (8) serves as project officer on contracts awarded in the State of California for the delivery of health care services, and coordinates activities for monitoring and evaluating contractor performance; (9) provides advice to the Area Director on the activities and issues related to the implementation of Title V of the American Indian Health Care Improvement Act, as amended, in the State of California; (10) provides support to urban Indian health programs and organizations in managing health programs and attending financial and other types of support available from other public and private agencies and organizations, and (11) designs, maintains, and controls the data collection, analysis, and publication of health program information in the activities.

Information Technology Division (GFGAC1)

(1) Develops, implements, and maintains policies, procedures and standards for information resource management and technology products and services in the CAIHS; (2) develops and maintains information technology strategic planning documents; (3) develops and maintains the CAIHS enterprise architecture; (4) develops and implements information technology management initiatives; (5) ensures IHS information technology infrastructure resource consolidation and standardization efforts support IHS healthcare delivery and program administration; (6) represents the IHS to Federal, Tribal, state, and other organizations; and (7) participates in cross-cutting issues and processes that involve information technology.

Office of Environmental Health & Engineering (GFGAD)

(1) Serves as the principal advisor, advocate, consultant, and technical assistant on all services relating to sanitation facilities construction, environmental health services, operation and maintenance, injury prevention, and facilities management for the CAIHS; (2) plans, coordinates, implements, and evaluates all aspects of Title I contracting and Title V compacting under the Indian Self-Determination and Education Assistance Act, as amended; (3) consults with Tribal groups/organizations in the development and implementation of environmental health and engineering policies and initiatives; (4) provides consultation and technical guidance to Tribal health programs including preventive maintenance surveys, personnel training, and fiscal reviews; (5) performs or directs surveys and

investigations to determine the condition of Tribal health facilities; (6) serves as the principal advisor regarding the real property management program which oversees owned and leased real property and General Services Administration (GSA) assigned space; interacts with GSA Region IX and Engineering Services to ensure adequacy of facilities; and (7) coordinates property management activities including space assignments, space need determinations, regulatory compliance, and reporting.

Environmental Health Services Division (GFGAD1)

(1) Maintains relationships with other Federal agencies and Tribes to maximize responses to environmental health issues and maximize benefits to Tribes by coordinating program efforts; (2) identifies environmental health needs of AI/AN populations and supports efforts to build Tribal capacity; (3) provides personnel support services and advocates for environmental health providers; and (4) performs functions related to environmental health programs such as injury prevention, emergency response, water quality, food sanitation, occupational health and safety, solid and hazardous waste management, environmental health issues in health care and non-health care institutions, and vector control.

Sanitation Facilities Construction Division (GFGAD2)

(1) Manages the environmental engineering programs, including the Sanitation Facilities Construction (SFC) program, and compliance activities associated with environmental protection and historic preservation legislation; (2) consults with Tribal groups/organizations in the development and implementation of SFC policies and initiatives, and in the identification of sanitation needs for single family housing and community facilities; and (3) works closely with other Federal agencies to resolve environmental issues and maximize benefits to Tribes by coordinating program efforts.

OEHE District Offices/Field Offices

Redding District Office—GFGAD2A
Arcata Field Office—GFGAD2A1
Sacramento District Office—GFGAD2B
Ukiah Field Office—GFGAD2B1
Clovis Field Office—GFGAD2B2
Escondido District Office—GFGAD2C

(1) Implements the SFC and Environmental Health Services responsibilities; (2) serves as the principal advisor to communities, individuals, contractors, and other organizations on all matters pertaining to SFC and Environmental Health Services; (3) implements activities that assist all health programs to attain accreditation by appropriate accrediting agencies; (4) implements the area fluoridation and operation and maintenance activities, and (5) implements the provision of sanitation facilities for new housing projects sponsored by other government agencies and for existing housing.

Health Facilities Engineering Division (GFGAD3)

(1) Develops, implements, and manages the programs affecting health care facilities operations, including routine maintenance and improvement, real property asset management, realty, facilities environmental, quarters, and clinical engineering programs; (2) serves as the principal resource for coordination of facilities operations and provides consultation to IHS and the Tribes on health care facilities operations; and (3) monitors the improvement, alteration, and repair of health care facilities.

Desert Sage Youth Wellness Center—GFGAE

(1) The Desert Sage Youth Wellness Center in Southern California provides inpatient substance abuse and alcohol treatment to eligible AI/AN youth as a Youth Regional Treatment Center (YRTC) and will help California Tribal youth find healthy directions in life; and (2) in addition to providing treatment services, the YRTC will work with Tribal and urban Indian programs to help provide a continuum of care, including preventive and aftercare services.

Sacred Oaks Healing Center—GFGAF

(1) The Sacred Oaks Healing Center in Northern California provides inpatient substance abuse and alcohol treatment to eligible AI/AN youth as a YRTC and will help California Tribal youth find healthy directions in life; and (2) in addition to providing treatment services, the YRTC will work with Tribal and urban Indian programs to help provide a continuum of care, including preventive and aftercare services.

Dated: October 25, 2016.

Elizabeth A. Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2016–26488 Filed 11–1–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 16–218 Provocative Questions in Pediatric Cancer.

Date: November 8, 2016.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–451–4467, *morrowcs@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26452 Filed 11–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–16–121 Early-Stage Preclinical Validation of Therapeutic Leads for Diseases of Interest to the NIDDK (R01).

Date: November 17–18, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Antonello Pileggi, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, Bethesda, MD 20892–7892, (301) 402–6297, *pileggia@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–16–121 Early-Stage Preclinical Validation of Therapeutic Leads for Diseases of Interest to the NIDDK (R01).

Date: November 17, 2016.

Time: 11:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1044, *chenhui@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vasular and Hematology: Molecular and Cellular Hematology.

Date: November 30, 2016.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0952, *espinozala@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Risk, Prevention and Health Behavior.

Date: December 1–2, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Claire E. Gutkin, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3106, MSC 7808, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Digestive Diseases.

Date: December 1–2, 2016.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156, Bethesda, MD 20892, 301–827–4417, *jianxinh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Kidney and Urology.

Date: December 1, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 2188, MSC 7818, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA: Immunology.

Date: December 1, 2016.

Time: 12:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review (CSR), National Institutes of Health (NIH), 6701 Rockledge Dr., Room 4203, Bethesda, MD 20817, (301) 435–3566, *alok.mulky@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR16–027: Commercialization Readiness Pilot.

Date: December 2, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott at Metro Center, 775 12th Street NW., Washington, DC 20005.

Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, ETTN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, *cbackman@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Mechanisms of Bacterial Virulence and Pathogenesis.

Date: December 2, 2016.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, RM 3200, MSC 7808, Bethesda, MD 20892, 301–435–1167, *pandyaga@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 27, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26451 Filed 11–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Public Health Service Applications and Pre-Award Reporting Requirements (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Mikia P. Currie, Program

Analyst, Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 350, Bethesda, Maryland 20892, or call a non-toll-free number 301–435–0941 or Email your request, including your address to *trialsinfo@od.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimizes the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Public Health Service (PHS) Applications and Pre-Award Reporting Requirements, Revision, OMB 0925–0001, Expiration Date 10/31/2018. Form numbers: PHS 398, PHS 416–1, PHS 416–5, and PHS 6031. This collection represents a consolidation of PHS applications and pre-award reporting requirements into a revised data collection under the PRA. This collection includes the proposed use of a new PHS clinical trial application form.

Need and Use of Information Collection: This collection includes PHS applications and pre-award reporting requirements: PHS 398 (paper) Public Health Service Grant Application forms and instructions; PHS 398 (electronic) PHS Grant Application component forms and agency specific instructions used in combination with the SF424 (R&R); PHS Fellowship Supplemental Form and agency specific instructions used in combination with the SF424 (R&R) forms/instructions for Fellowships (electronic); PHS 416–1 Ruth L. Kirschstein National Research Service Award Individual Fellowship Application Instructions and Forms used only for a change of sponsoring institution application [paper]; Instructions for a Change of Sponsoring Institution for the National Research Service Award (NRSA) Fellowships (F30, F31, F32 and F33) and non-NRSA Fellowships; PHS 416–5 Ruth L. Kirschstein National Research Service Award Individual Fellowship Activation Notice; and PHS 6031 Payback Agreement. The PHS 398 (paper and electronic) are currently approved under 0925–0001. All forms expire 10/31/2018. Post-award reporting requirements are simultaneously consolidated under 0925–0002, and include the Research Performance Progress Report (RPPR). The PHS 398 and SF424 applications are used by applicants to request federal assistance funds for traditional investigator-initiated research projects and to request access to databases and other PHS resources. The PHS 416–1 is used only for a change of sponsoring institution application. PHS Fellowship Supplemental Form and agency specific instructions is used in combination with the SF424 (R&R) forms/instructions for Fellowships and is used by individuals to apply for direct research training support. Awards are made to individual applicants for specified training proposals in biomedical and behavioral research, selected as a result of a national competition. The PHS 416–5 is used by individuals to indicate the start of their National Research Service Award (NRSA) awards. The PHS 6031 Payback Agreement is used by individuals at the time of activation to certify agreement to fulfill the payback provisions. Clinical trials are complex and challenging research activities. Oversight systems and tools are critical for the NIH to ensure participant safety, data integrity, and accountability of the use of public funds. The NIH has been engaged in a multi-year effort to examine how clinical trials are supported and the level of oversight needed. The collection of more structured information about proposed clinical trials in the PHS applications and pre-award reporting requirements will facilitate the NIH's oversight of clinical trials as well as assist in understanding where needs in the NIH research portfolio may exist. In addition, some of the data collected here will ultimately be accessible to investigators to pre-populate certain sections of forms when registering their trials with *ClinicalTrials.gov*.

Frequency of response: Applicants may submit applications for published receipt dates. For NRSA awards, fellowships are activated and trainees appointed.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 850,756.

ESTIMATED ANNUALIZED BURDEN HOURS

Information collection forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
PHS 398—Paper	4,247	1	35	148,645
PHS 398/424—Electronic:				
PHS Assignment Request Form	37,120	1	30/60	18,560
PHS 398 Cover Page Supplement	74,239	1	1	74,239
PHS Inclusion Enrollment Report	54,838	1	1	54,838
PHS 398 Modular Budget	56,693	1	1	56,693
PHS 398 Training Budget	1,122	1	2	2,244
PHS 398 Training Subaward Budget Attachment(s) Form	561	1	90/60	842
PHS 398 Research Plan	70,866	1	3	212,598
PHS 398 Research Training Program Plan	1,122	1	3	3,366
Data Tables	1,515	1	4	6,060
PHS 398 Career Development Award Supplemental Form	2,251	1	3	6,753
PHS Clinical Trial Protocol Form	8,264	1	1	8,264
Biosketch (424 Electronic)	80,946	1	2	161,892
PHS Fellowship—Electronic:				
PHS Fellowship Supplemental Form (includes F reference letters)	6,707	1	12.5	83,838

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Information collection forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
PHS Assignment Request Form	3,354	1	30/60	1,677
PHS Inclusion Enrollment Report	3,354	1	1	3,354
Biosketch (Fellowship)	6,707	1	2	13,414
416–1	29	1	10	290
PHS 416–5	6,707	1	5/60	559
PHS 6031	6,217	1	5/60	518
VCOC Certification	6	1	5/60	1
SBIR/STTR Funding Agreement Certification	1,500	1	15/60	375
Total Annual Burden Hours	.....	420,101	.....	850,756

Dated: October 22, 2016.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2016–26448 Filed 11–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: December 8, 2016.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817, (Virtual Meeting).

Contact Person: Priscah Mujuru, DRPH, COHNS, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Suite 5B01, Bethesda, MD 20892–7510, 301–435–6908, *mujurup@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 27, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26386 Filed 11–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request, National Institutes of Health Electronic Application System for Certificates of Confidentiality

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 18, 2016 (81 FR 55207–55208) and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Ann Hardy, NIH Extramural Human Research Protections Officer and NIH Coordinator, Certificates of Confidentiality, 3701 Rockledge Dr. Rm. 3002, Bethesda, MD 20892, or call non-toll-free number (301) 435–2690 or Email your request, including your address to: *hardyan@od.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Office of Extramural Research (OER), NIH, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the NIH has submitted to the OMB a request for review and approval of the information collection listed below.

Proposed Collection: Certificate of Confidentiality Electronic Application System, 0925–0689, expiration date 01/31/2017, OER, NIH.

Need and Use of Information Collection: This application system provides one electronic form to be used by all research organizations that wish to request a Certificate of Confidentiality (CoC) from the NIH. As described in the authorizing legislation (Section 301(d) of the Public Health Service Act, 42 U.S.C. 241(d)), CoCs are issued by the

agencies of Department of Health and Human Services (HHS), including the NIH, to authorize researchers conducting sensitive research to protect the privacy of human research subjects by enabling them to refuse to release names and identifying characteristics of subjects to anyone not connected with the research. At the NIH, the issuance of CoCs has been delegated to the individual NIH Institutes and Centers (ICs). To make the application process consistent across the entire agency, OER launched an electronic application system in 2015 that is used by research organizations that wish to request a CoC from any NIH IC. Having one system for all CoC applications to the NIH is more efficient for both applicants and NIH staff who process these requests. The NIH uses the information in the application to determine eligibility for a CoC and to issue the CoC to the requesting organization. It is anticipated that the NIH ICs will issue approximately 1300 new CoCs each year for eligible research projects.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total annualized burden hours estimate is 1,951.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Frequency of response	Average time per response (in hours)	Total annual burden hours
CoC Applicants—Private	455	1	90/60	683
CoC Applicants—State/local	650	1	90/60	975
CoC Applicants—Small business	130	1	90/60	195
CoC Applicants—Federal	65	1	90/60	98

Dated: October 25, 2016.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2016–26445 Filed 11–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Post-Award Reporting Requirements Including Research Performance Progress Report Collection (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Mikia P. Currie, Program Analyst, Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 350, Bethesda, Maryland 20892, or call a non-toll-free number 301–435–0941 or Email your request, including your address to *trialsinfo@od.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimizes the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Public Health Service (PHS) Post-award Reporting Requirements, Revision, OMB 0925–0002, Expiration Date 10/31/2018. Form numbers: PHS 2590, PHS 416–7, PHS 2271, PHS 3734, PHS 6031–1, and HHS 568. This collection represents a consolidation of post-award reporting requirements under the PRA, including the Research Performance Progress Report (RPPR). This collection includes the proposed additional reporting requirements for clinical trials.

Need and Use of Information Collection: The RPPR is now required to be used by all NIH, Food and Drug Administration, Centers for Disease Control and Prevention, and Agency for Healthcare Research and Quality (AHRQ) grantees. Interim progress reports are required to continue support of a PHS grant for each budget year within a competitive segment. The phased transition to the RPPR required the maintenance of dual reporting processes for a period of time. Continued use of the PHS Non-competing Continuation Progress Report (PHS 2590), exists for a small group of grantees. This collection also includes other PHS post-award reporting requirements: PHS 416–7 National Research Service Award (NRSA) Termination Notice, PHS 2271 Statement of Appointment, 6031–1 NRSA Annual Payback Activities Certification, HHS 568 Final Invention Statement and Certification, Final Progress Report instructions, iEdison, and PHS 3734 Statement Relinquishing Interests and Rights in a PHS Research Grant. The PHS 416–7, 2271, and 6031–1 are used by NRSA recipients to activate, terminate, and provide for payback of a NRSA. Closeout of an award requires a Final Invention Statement (HHS 568) and Final Progress Report. iEdison allows grantees and federal agencies to meet statutory requirements for reporting inventions and patents. The PHS 3734 serves as the official record of grantee relinquishment of a PHS award when an award is transferred from one grantee institution to another. Pre-award reporting

requirements are simultaneously consolidated under 0925–0001 and the changes to the collection here are related. Clinical trials are complex and challenging research activities. Oversight systems and tools are critical for the NIH to ensure participant safety, data integrity, and accountability of the use of public funds. The NIH has been engaged in a multi-year effort to examine how clinical trials are supported and the level of oversight needed. The collection of more structured information in the PHS applications and pre-award reporting requirements as well as continued monitoring and update during the post-award reporting requirements will facilitate the NIH's oversight of clinical trials. In addition, some of the data reported in the RPPR will ultimately be accessible to investigators to update certain sections of forms when registering or reporting their trials with *ClinicalTrials.gov.*

Frequency of response: Applicants may submit applications for published receipt dates. For NRSA awards, fellowships are activated and trainees appointed.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 307,116.

ESTIMATED ANNUALIZED BURDEN HOURS

Information collection forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Reporting:				
PHS 416–7	12,580	1	30/60	6,290
PHS 6031–1	1,778	1	20/60	593
PHS 568	11,180	1	5/60	932
iEdison	5,697	1	15/60	1,424
PHS 2271	22,035	1	15/60	5,509
PHS 2590	243	1	15	3,645
RPPR—Core Data	32,098	1	8	256,784
Biosketch (Part of RPPR)	2,544	1	2	5,088
Data Tables (Part of RPPR)	758	1	4	3,032
PHS Inclusion Enrollment Report (Part of RPPR)	2,544	1	1	2,544
PHS Clinical Trial Report/Form (Part of RPPR)	8,264	1	1	8,264
Trainee Diversity Report (Part of RPPR)	480	1	15/60	120
Publication Reporting	32,341	3	5/60	8,085
PHS 3734	479	1	30/60	240
Final Progress Report	11,125	1	1	11,125
SBIR/STTR Phase II Final Progress Report	1,330	1	1	1,330
Reporting Burden Total	.....	.....	.....	306,741
Recordkeeping:				
SBIR/STTR Life Cycle Certification	1,500	1	15/60	375
Grand Total	.....	203,394	.....	307,116

Dated: October 22, 2016.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2016–26447 Filed 11–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the National Heart, Lung and Blood Institute, Office of Technology Transfer and Development, National Institutes of Health, 31 Center Drive Room 4A29, MSC2479, Bethesda, MD 20892–2479; telephone: 301–402–5579. A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology descriptions follow.

Methods for Artificial Oocyte Activation

Description of Technology

Available for licensing and commercial development for both human and veterinary uses is a method of activating mammalian oocytes. These methods include contacting a mammalian oocyte of interest arrested at metaphase II with an effective amount of a Regulator of G-Protein Signaling (RGS)2 inhibitor; and contacting the mammalian oocyte of interest with an effective amount of a G protein coupled receptor activator. In general, RGS proteins stimulate the hydrolysis of GTP bound to activated Gα subunits, leading to signal termination. RGS2, which inhibits both G-αq and G-αs signaling suppresses Ca2+ release in mature mammalian eggs. Regulators of G-Protein Signaling (RGS)2 inhibitor and a G protein coupled receptor activator can be used to artificially activate a mammalian oocyte such that it re-enters the cell cycle. Examples of RGS2 inhibitors can be nucleic acids like siRNAs or dsRNAs. G-protein coupled receptor activators can be acetylcholine, a neurotransmitter such as serotonin, hormones, natural or synthetic G

protein coupled receptor ligands or modulator, and acidic pH. The oocyte can be fertilized in vitro to form an embryo, which can be implanted in a subject and developed to term or can be used for the preparation of stem cells.

Potential Commercial Applications

- in vitro fertilization

Development Stage

- Early Stage

Inventors: Miranda L. Bernhardt, Carmen J. Williams, Andres Gambini (all of NIEHS), and Lisa M. Mehlmann (University of Connecticut).

Intellectual Property: HHS Reference No. E–253–2016/0.

- U.S. Provisional Patent Application No. 62/405,803 filed 7 October 2016.

Licensing Contact: Michael Shmilovich, Esq, CLP; 301–435–5019; *shmilovm@mail.nih.gov.*

Dated: October 24, 2016.

Michael Shmilovich,

National Heart, Lung and Blood Institute, Office of Technology Transfer and Development, National Institutes of Health.

[FR Doc. 2016–26390 Filed 11–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: December 9, 2016.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: Emerging Opportunities to Streamline Cancer Drug Development.

Place: The Ritz Carlton Pentagon City, 1250 S. Hayes Street, Arlington, VA 22202.

Contact Person: Abby B. Sandler, Ph.D., Executive Secretary, President's Cancer Panel, Special Assistant to the Director, Center for Cancer Research, National Cancer Institute, NIH, 9000 Rockville Pike, Building 31, Room B2B37, MSC 2590, Bethesda, MD 20892–8349, 301–451–9399, *sandlera@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://prescancerpanel.cancer.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 26, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26389 Filed 11–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Topics in Cell Biology.

Date: November 29, 2016.

Time: 12:15 p.m. to 2:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Janet M Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Allergy, Autoimmunity, Transplantation, and Tumor Immunology.

Date: November 29, 2016.

Time: 12:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Liying Guo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016F, Bethesda, MD 20892, 301–435–0908, *lguo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26450 Filed 11–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts—Molecular and Cellular Neuroscience.

Date: November 17, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian H Scott, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1730, *brianscott@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Projects: Mechanisms of Cell Division.

Date: November 28, 2016.

Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–435–1236, *smirnove@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular and Cellular Aspects of Nutrition, Obesity and Diabetes.
Date: November 29, 2016.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Raul Rojas, Ph.D., Scientific Review Officer, Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Room 6185, Bethesda, MD 20892, (301)451–6319, *rojasr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–12–251: Behavioral Science Track Award for Rapid Transition Review.
Date: December 2, 2016.
Time: 1:30 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Wind Cowles, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, Bethesda, MD 20892, *cowleshw@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 27, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26454 Filed 11–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute Of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.
Date: November 4, 2016.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Multivariate Genetics & Genomics of Reading & Comprehension & Related Cognition.
Date: November 28, 2016.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6710 B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6710B Rockledge Drive, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 27, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26387 Filed 11–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy And Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.
Date: December 12–14, 2016.
Time: December 12, 2016, 7:45 a.m. to 5:45 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Institutes of Health, Building 50, Louis Stokes Laboratories, Conference Rooms 1227/1233, 50 Center Drive, Bethesda, MD 20892.

Time: December 13, 2016, 7:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Institutes of Health, Building 50, Louis Stokes Laboratories, Conference Rooms 1227/1233, 50 Center Drive, Bethesda, MD 20892.

Time: December 14, 2016, 7:00 a.m. to Adjournment.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Institutes of Health, Building 50, Louis Stokes Laboratories, Conference Rooms 1227/1233, 50 Center Drive, Bethesda, MD 20892.

Contact Person: Steven M. Holland, MD, Ph.D., Chief, Laboratory of Clinical Infectious Diseases, National Institutes of Health/NIAID, Hatfield Clinical Research Center, Bethesda, MD 20892–1684, 301–402–7684, *sholland@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 26, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26388 Filed 11–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N03A, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW., Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories).

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories).

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890.

Dynacare*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Fortes Laboratories, Inc., 25749 SW. Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly:

University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.
Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840.
Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370, (Formerly: SmithKline Beecham Clinical Laboratories).
Redwood Toxicology Laboratory, 3650 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159.
Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.
STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register,** July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Charles LoDico,

Chemist.

[FR Doc. 2016–26427 Filed 11–1–16; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4285–DR; Docket ID FEMA–2016–0001]

North Carolina; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4285–DR), dated October 10, 2016, and related determinations.

DATES: Effective October 13, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 10, 2016.

Dare and Hyde Counties for Individual Assistance (already designated for assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

Jones County for Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–26478 Filed 11–1–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4285–DR; Docket ID FEMA–2016–0001]

North Carolina; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4285–DR), dated October 10, 2016, and related determinations.

DATES: *Effective Date:* October 19, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 10, 2016.

Onslow County for Individual Assistance (already designated for assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034,

Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–26472 Filed 11–1–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4285–DR; Docket ID FEMA–2016–0001]

North Carolina; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4285–DR), dated October 10, 2016, and related determinations.

DATES: *Effective Date:* October 24, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 10, 2016.

Lee, Moore, and Wake Counties for Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–26471 Filed 11–1–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4285–DR; Docket ID FEMA–2016–0001]

North Carolina; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4285–DR), dated October 10, 2016, and related determinations.

DATES: *Effective Date:* October 17, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 10, 2016.

Craven County for Individual Assistance (already designated for assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–26474 Filed 11–1–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4287–DR; Docket ID FEMA–2016–0001]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–4287–DR), dated October 20, 2016, and related determinations.

DATES: *Effective Date:* October 20, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 20, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from severe storms and flooding during the period of September 2–12, 2016, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75

percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Christian M. Van Alstyne, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Kansas have been designated as adversely affected by this major disaster:

Cheyenne, Cowley, Ellis, Graham, Greenwood, Kingman, Norton, Rooks, Russell, Sedgwick, and Sumner Counties for Public Assistance.

All areas within the State of Kansas are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–26476 Filed 11–1–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4285–DR; Docket ID FEMA–2016–0001]

North Carolina; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4285–DR), dated October 10, 2016, and related determinations.

DATES: Effective October 25, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 10, 2016.

Camden, Chowan, Currituck, and Pasquotank Counties for Individual Assistance (already designated for assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

Hertford County for assistance for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–26483 Filed 11–1–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4285–DR; Docket ID FEMA–2016–0001]

North Carolina; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4285–DR), dated October 10, 2016, and related determinations.

DATES: Effective Date: October 17, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 10, 2016.

Martin County for Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

Tyrrell and Washington Counties for Individual Assistance (already designated for assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–26475 Filed 11–1–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4278–DR; Docket ID FEMA–2016–0001]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for Commonwealth of Kentucky (FEMA–4278–DR), dated August 26, 2016, and related determinations.

DATES: *Effective Date:* October 24, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lai Sun Yee, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Warren J. Riley as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–26479 Filed 11–1–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4284–DR; Docket ID FEMA–2016–0001]

Georgia; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4284–DR), dated October 8, 2016, and related determinations.

DATES: *Effective Date:* October 27, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 8, 2016.

Ware County for Public Assistance, including direct federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–26484 Filed 11–1–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4285–DR; Docket ID FEMA–2016–0001]

North Carolina; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4285–DR), dated October 10, 2016, and related determinations.

DATES: *Effective Date:* October 13, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 10, 2016.

Duplin and Pender Counties for Individual Assistance (already designated for assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

Gates County for Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–26477 Filed 11–1–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–MB–2016–N160; FF08M00000–FXMB12310800000–167]

Golden Eagles; Programmatic Take Permit Decision; Finding of No Significant Impact for Final Environmental Assessment; Alta East Wind Project, Kern County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a Finding of No Significant Impact (FONSI) for the final Environmental Assessment (FEA) under the National Environmental Policy Act (NEPA) for the issuance of a take permit for golden eagles pursuant to the Bald and Golden Eagle Protection Act (Eagle Act), in association with the operation of the Alta East Wind Project (Alta East) in Kern County, California. The FEA was prepared in response to an application from Alta Wind X, LLC (applicant), an affiliate of NRG Yield, Inc., for a 5-year programmatic take permit for golden eagles (*Aquila chrysaetos*) under the Eagle Act. The applicant will implement a conservation program to avoid, minimize, and compensate for the project's impacts to eagles, as described in the applicant's Eagle Conservation Plan (ECP). We solicited comments on the draft Environmental Assessment (Draft EA) and have reviewed those comments in the course of preparing our findings for this project. Based on the FEA, the Service concludes that a Finding of No Significant Impact (FONSI) is appropriate. Based on the FONSI and findings we prepared associated with the permit application, we intend to issue the permit after 30 days.

ADDRESSES: *Obtaining Documents:* You may download copies of the FONSI, FEA, our Response to Comments on the Draft EA and the Final ECP for the Alta East Wind Project on the Internet at: *http://www.fws.gov/cno/conservation/MigratoryBirds/EaglePermits.html.* Alternatively, you may use one of the methods below to request a CD–ROM of the document.

- *Email: fw8_eagle_nepa@fws.gov.* Include ''Alta East Eagle Permit draft EA Comments'' in the subject line of the message.
- *U.S. Mail:* Heather Beeler, Migratory Bird Program, U.S. Fish and Wildlife Service, Pacific Southwest Regional Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825.
- *Fax:* Heather Beeler, Migratory Bird Program, 916–414–6486; Attn: Alta East Wind Project DEA Comments.

FOR FURTHER INFORMATION CONTACT: Heather Beeler, Migratory Bird Program, at the address shown in **ADDRESSES** or at (916) 414–6651 (telephone).

SUPPLEMENTARY INFORMATION:

Introduction

We, the U.S. Fish and Wildlife Service, evaluated an application under the Bald and Golden Eagle Protection Act (16 U.S.C. 668a–d; Eagle Act) for a 5-year programmatic golden eagle (*Aquila chrysaetos*) take permit from the Alta Wind X, LLC (applicant), affiliate of NRG Yield, Inc. The applicant's Alta East Wind Project is an existing, operational wind facility in the Tehachapi Wind Resource Area (WRA) within Kern County, California. The application includes an Eagle Conservation Plan (ECP) as the foundation of the applicant's permit application. The ECP and the project's Bird and Bat Conservation Strategy describe actions taken and proposed future actions to avoid, minimize, and mitigate adverse effects on eagles, birds, and bats.

We prepared the FEA and FONSI to evaluate the impacts to the human environment of several alternatives associated with this permit application and evaluated compliance with our Eagle Act permitting regulations in the Code of Federal Regulations (CFR) at 50 CFR 22.26, as well as impacts of implementation of the supporting ECP, which was included as an appendix to the DEA. The applicant has revised the ECP, and the Final ECP is an attachment to our FONSI (Attachment 3).

Public Comments on the Draft Environmental Assessment (EA)

We invited public comment on the Draft EA. In response, we received ten submissions; two submissions from Native American tribes, three from nongovernmental organizations (NGOs), three from the public, one from the electric utility industry and one from the applicant. One of the NGO comment letter combined comments from three different environmental organizations. Our responses to the comments on the Draft EA are presented in Attachment 2 of the FONSI.

In total, the comment letters contained approximately 36 individual comments. These comments generally fell under one of five main categories: (1) Effects to the species (including number of fatalities, local and cumulative effects, other sources of fatalities, and overall population numbers); (2) advanced conservation practices (ACPs), Technical Advisory Committee (TAC) role, transparency of the process and future ACPs, project siting, and curtailment); (3) mitigation (addressing scientific basis for electric utility retrofits and location of retrofits); (4) monitoring and reporting (addressing project reporting and Tehachapi Wind Resource Area eagle mortality reporting); and (5) general comments about the permitting program (including comments opposing the issuance of an eagle take permit).

Overall, the comments raised issues regarding the opportunities and challenges associated with issuing eagle take permits. We made changes to three topic areas of the FEA based on these comments. First, we added information on our risk evaluation under the curtailment program. We added more detailed information on the science behind the electric utility pole retrofit process for mitigation. We also expanded our discussion about our National Fish and Wildlife Foundation (NFWF) Eagle Mitigation Account.

We made some additional minor changes to the final EA to improve clarity. After considering all the comments, and in light of the record, we determined that neither substantial revisions nor a new analysis are required for the FEA. Detailed responses to specific comments are included in the FONSI (Attachment 2).

Background

The Eagle Act allows us to authorize bald eagle and golden eagle programmatic take (take that is recurring, is not caused solely by indirect effects, and that occurs over the long term in a location or locations that cannot be specifically identified). Such take must be incidental to actions that are otherwise lawful. The Eagle Act's implementing regulations define ''take'' as to ''pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb'' individuals, their nests and eggs (50 CFR 22.3); and ''disturb'' is further defined as ''to agitate or bother a bald or golden eagle to a degree that causes . . . (1) injury to an eagle, . . . (2) a decrease in its productivity, . . . or (3) nest abandonment'' (50 CFR 22.3). The Alta East Wind Project will result in recurring eagle mortalities over the life of the project, so the appropriate type of take permit is the programmatic permit under 50 CFR 22.26.

We may consider issuance of programmatic eagle take permits if (1) the incidental take is necessary to protect legitimate interests; (2) the take is compatible with the preservation

standard of the Eagle Act—providing for stable or increasing breeding populations; (3) the take has been avoided and minimized to the degree achievable through implementation of Advanced Conservation Practices, and the remaining take is unavoidable; and (4) compensatory mitigation will be provided for any remaining take. The Service must determine that the direct and indirect effects of the take and required mitigation, together with the cumulative effects of other permitted take and additional factors affecting eagle populations, are compatible with the preservation of bald eagles and golden eagles.

Decision

The Service's Selected Alternative for our issuance of a programmatic eagle take permit to Alta East contains elements of Alternatives 3, 4 and 5 of the EA. Under the Selected Alternative described in our FONSI, we will issue a 5-year programmatic eagle take permit to Alta X Wind, LLC for take of up to 3 golden eagles requiring implementation of the ECP, curtailment when eagles are detected and additional monitoring and mitigation. The Service has determined that a Finding of No Significant Impact (FONSI) is appropriate for this action. Based on the FONSI and findings prepared associated with the permit application, we intend to issue a permit after 30 days.

Authority

We provide this notice under Section 668a of the Eagle Act (16 U.S.C. 668–668c) and NEPA regulations (40 CFR 1506.6).

Dated: October 14, 2016.

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest, Sacramento, California.

[FR Doc. 2016–25746 Filed 11–1–16; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR936000.L1440000.ET0000. 16XL1109AF; HAG 16–0207]

Notice of Amended Proposed Withdrawal and Notice of Public Meetings; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: This notice corrects a notice that was published in the **Federal Register** on September 30, 2016 (81 FR 67377), which misidentified the Department of the Interior official who approved an amendment to a previously filed withdrawal application.

FOR FURTHER INFORMATION CONTACT: Jacob Childers, Oregon State Office, Bureau of Land Management, at 503–808–6225 or by email *jcchilders@blm.gov,* or Candice Polisky, USFS Pacific Northwest Region, at 503–808–2479. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to reach either of the above individuals. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A notice that was published in the **Federal Register** on September 30, 2016 (81 FR 67377), misidentified the Department of the Interior official who approved an amendment to a previously filed withdrawal application. Page 67377, line 11, in the **SUMMARY** section reads:

The Assistant Secretary of the Interior for Land and Minerals Management has approved an amendment to a previously filed application to withdraw public domain and Revested Oregon California Railroad lands (O&C) managed by the Bureau of Land Management (BLM) and National Forest System (NFS) lands managed by the U.S. Forest Service (Forest Service) while Congress considers legislation to permanently withdraw those lands.

The notice is hereby corrected to read:

The Deputy Secretary of the Interior has approved an amendment to a previously filed application to withdraw public domain and Revested Oregon California Railroad lands (O&C) managed by the Bureau of Land Management (BLM) and National Forest System (NFS) lands managed by the U.S. Forest Service (Forest Service) while Congress considers legislation to permanently withdraw those lands.

Leslie A. Frewing,

Chief, Branch of Land, Minerals, and Energy Resources. Acting.

[FR Doc. 2016–26459 Filed 11–1–16; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments; Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain High-Potency Sweeteners, Processes for Making Same, and Products Containing Same, DN 3180;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under § 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Celanese International Corporation, Celanese Sales U.S. Ltd. and Celanese IP Hungary Bt on October 26, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain high-potency sweeteners, processes for making same, and products containing same. The complaint names as respondents Suzhou Hope Technology Co., Ltd. of China; Anhui Jinhe Industrial Co., Ltd. of China; and Vitasweet Co., Ltd. of China. The complainant requests that the Commission issue a general exclusion order, or in the alternative a limited exclusion order, issue cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3180'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.[1]) Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 27, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–26385 Filed 11–1–16; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1016]

Certain Access Control Systems and Components Thereof; Commission Determination Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 4) of the presiding administrative law judge (''ALJ''), granting complainant's motion to amend the complaint and notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 9, 2016, based on a complaint filed on behalf of The Chamberlain Group, Inc. of Elmhurst, Illinois. 81 FR 52713. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of the following U.S. Patent Nos.: 7,161,319; 7,196,611; and 7,339,336. The complaint further alleges that a domestic industry exists. The Commission's notice of investigation named six respondents. The Office of Unfair Import Investigations is not participating in the investigation.

On September 23, 2016, complainant filed an unopposed motion to amend the complaint and notice of investigation (''NOI'') to add two entities as respondents: (1) Techtronic Trading Limited of Kwai Chung, Hong Kong; and (2) Techtronic Industries Factory Outlets Inc., d/b/a Direct Tools Factory Outlet of Anderson, South Carolina.

The ALJ issued the subject ID on September 28, 2016, granting complainant's motion to amend the complaint and NOI. He found that good cause exists to grant the motion to amend under Commission Rule 210.14(b)(1) (19 CFR 210.14(b)(1)). No petitions for review were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: October 27, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–26397 Filed 11–1–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 9–16]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Wednesday, November 16, 2016:

10:00 a.m.—Oral hearing on Objection to Commission's Proposed Decision in Claim No. IRQ–II–318.

10:30 a.m.—Issuance of Proposed Decisions in claims against Iraq.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Brian M. Simkin,

Chief Counsel.

[FR Doc. 2016–26534 Filed 10–31–16; 11:15 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0013]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection, Application for Permit To Import Controlled Substances for Domestic and/or Scientific Purposes

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 FR page 56703, August 22, 2016, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until December 2, 2016.

FOR FURTHER INFORMATION CONTACT: If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Michael J. Lewis, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Application for Permit to Import Controlled Substances for Domestic and/or Scientific Purposes pursuant to 21 U.S.C. 952.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Form: 357. The applicable component within the Department of Justice is the Drug Enforcement Administration, Office of Diversion Control.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): None.

Abstract: Section 1002 of the Controlled Substances Import and Export Act (CSIEA) (21 U.S.C. 952) and Title 21, Code of Federal Regulations (21 CFR), Sections 1312.11, 1312.12 and 1312.13 requires any person who desires to import controlled substances listed in schedules I or II, any narcotic substance listed in schedules III or IV, or any non-narcotic substance in schedule III which the Administrator has specifically designated by regulation in § 1312.30, or any nonnarcotic substance in schedule IV or V which is also listed in schedule I or II of the Convention on Psychotropic Substances, must have an import permit. To obtain the permit to import controlled substances for domestic and or scientific purposes, an application for the permit must be made to the DEA on DEA Form 357.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates that 151 registrants participate in this

information collection, taking an estimated 0.25 hours per registrant annually.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates the total public burden (in hours) associated with this collection: 333 annual burden hours.

If additional information is required please contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405B, Washington, DC 20530.

Dated: October 27, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–26415 Filed 11–1–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amended Consent Decree Under the Clean Water Act

On October 27, 2016, the Department of Justice lodged a proposed amended consent decree with the United States District Court for the Middle District of Pennsylvania in the lawsuit entitled *United States* v. *Sewer Authority of the City of Scranton,* Civil Action No. 3:09–cv–1873.

The United States filed this lawsuit under the Clean Water Act in 2009, seeking injunctive relief and civil penalties for violations of the Clean Water Act relating to the municipal wastewater treatment plant and collection system owned and operated by the Scranton Sewer Authority. The litigation was resolved on January 31, 2013 when the court entered a consent decree that requires the Scranton Sewer Authority to implement a long term control plan to address combined sewer overflows by December 1, 2037. The Scranton Sewer Authority now proposes to sell its wastewater treatment plant and collection system, and to transfer the remaining obligations under the consent decree, to Pennsylvania American Water Company. The proposed amended consent decree would substitute Pennsylvania American Water Company as the defendant to the consent decree, and release the Scranton Sewer Authority from its obligations, in the event that the proposed sale of the treatment plant and collection system proceeds to closing on or before March 31, 2017.

The publication of this notice opens a period for public comment on the amended consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Scranton Sewer Authority,* D.J. Ref. No. 90–5–1–1–08778. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the amended consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $49.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $12.00.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–26430 Filed 11–1–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–NEW]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Assessing the Potential Monetized Benefits of Captioning Web Content for Individuals Who Are Deaf or Hard of Hearing

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Civil Rights Division, Disability Rights Section (DRS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 FR 29577 on May 12, 2016, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until December 2, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments (especially on the estimated public burden or associated response time), suggestions, need a copy of the proposed information collection instrument with instructions, or need additional information, please contact Rebecca B. Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, by any one of the following methods: By email at *DRS.PRA@usdoj.gov;* by regular U.S. mail to Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 2885, Fairfax, VA 22031–0885; by overnight mail, courier, or hand delivery to Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue NW., Suite 4039, Washington, DC 20005; or by phone at (800) 514–0301 (voice) or (800) 514–0383 (TTY) (the Americans with Disabilities Act (ADA) Information Line). Include in the subject line of all written comments the title of this proposed collection: ''Assessing the Potential Monetized Benefits of Captioning Web Content for Individuals Who Are Deaf or Hard of Hearing.'' Written comments or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

You may obtain copies of this notice in an alternate format by calling the ADA Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

• Evaluate whether, and if so, how, the quality, utility, and clarity of the information to be collected can be enhanced; and/or;

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this Information Cl:

1. *Type of information collection:* New information collection.

2. *The title of the form/collection:* Assessing the Potential Monetized Benefits of Captioning Web Content for Individuals Who Are Deaf or Hard of Hearing.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form Number: None.

Component: The applicable component within the Department of Justice is the Disability Rights Section (DRS) in the Civil Rights Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected Public (Primary): Individuals who are deaf or hard of hearing will be asked to respond.

Affected Public (Other): None.

Abstract: DOJ's Civil Rights Division, Disability Rights Section (DRS) is requesting PRA approval of a new collection that would request information about the perceived monetary value of captioning on Web sites from individuals who are deaf or hard of hearing for the purpose of estimating the potential monetized benefits of captioning audio and video content on the Web. DRS is not suggesting that people with disabilities should be asked to pay for captioning; rather, it intends to ask individuals about the theoretical monetary value that they place on the captioning of audio and video Web content in order to estimate how highly they value captioning. The collection will also request additional information about how frequently individuals who are deaf or hard of hearing access audio content on Web sites, what type of audio content they access, how often this content is not captioned, how much additional time (if any) they spend trying to access content or information when the content is not captioned, and whether lack of captioning makes using the Internet more difficult. This information will enhance DRS's ability to monetize the benefits of any captioning requirements imposed by future rulemaking under the Americans with Disabilities Act (ADA) for individuals who are deaf or hard of hearing.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,070 respondents will complete the questions. It is estimated that an average of 10 minutes per respondent is needed to complete the questions. DRS estimates that nearly all of the approximately 1,070 respondents will fully complete the questions.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 178 hours. It is estimated that respondents will take an average of 10 minutes (⅙ of an hour) to complete the questions. The burden hours for collecting respondent data sum to 178.33 hours (1,070 respondents × ⅙ hours = 178 and ⅓ hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: October 27, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–26400 Filed 11–1–16; 8:45 am]

BILLING CODE 4410–13–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Improving the Management and Use of Government Aircraft

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget

ACTION: Proposed Revision to Office of Management and Budget Circular No. A–126, ''Improving the Management and Use of Government Aircraft.''

SUMMARY: The Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) is proposing to revise OMB Circular A–126 ''Improving the Management and Use of Government Aircraft'' to update policies associated with the management and use of Government aircraft, including General Services Administration (GSA) and agency roles in regulating and managing the Federal aviation programs that have evolved since the Circular was last revised in 1992. The proposed changes also address recommendations from the Interagency Committee for Aviation Policy (ICAP) to make a clearer distinction between polices that apply to the management of aircraft and policies that apply to travel on Government aircraft.

DATES: Interested parties should submit comments in writing to the address below on or before 30 days after publication in the **Federal Register**.

ADDRESSES: Comments may be submitted online at *www.regulations.gov.*

Instructions: All comments received will be posted, without change or redaction, to *www.regulations.gov*, so commenters should not include information that they do not wish to be posted (for example because they consider it personal or business confidential).

FOR FURTHER INFORMATION CONTACT: Jim Wade, OFPP, *jwade@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Overview

Federal agencies own more than 1,200 operational aircraft to support a wide range of missions, including fire-fighting, law enforcement, research and development, and other activities. Federal aircraft are also used in various situations to transport certain executives. OMB Circular A–126 sets forth requirements to help ensure the appropriate agency use of Government aircraft.

Traditionally, the Circular has focused primarily on travel policy. When the Circular was last updated in 1992, coverage was strengthened to restrict the operation of aircraft to defined official purposes, restrict travel on such aircraft, require special review of such travel by senior officials or non-Federal travelers, and codify policies for reimbursement. The proposed revisions to A–126 would retain these policies but make several refinements to address recommendations made by the Government Accountability Office (GAO) in a 2014 report (GAO–14–151) recommending clarification on reporting exemptions for the Intelligence Community. Currently, the Circular exempts the reporting of classified trips, but the reporting of unclassified data is not explicitly addressed. To resolve this ambiguity, the proposed revisions to the Circular would include a clear statement that the Intelligence

Community must maintain information on trips by senior Federal officials and non-Federal travelers, but agencies included in the community would not be required to report the data to the General Services Administration (GSA). Similarly, other agencies must maintain information on the required use of Government aircraft, but they are not required to report the data to GSA.

Other proposed revisions would clarify the requirements for contractors traveling on Government aircraft and expand the guidance for determining whether Government aircraft is the most cost-effective alternative for meeting travel requirements.

Further revisions are proposed to enhance the Circular's coverage on aircraft management. These changes are designed to integrate a number of policies and practices that have been developed or refined since the Circular was last updated that strengthen investment and management practices associated with capital assets. For example, the Circular adds references to long-standing requirements in OMB Circular A–11 to prepare a business case that justifies the acquisition and operation of a capital asset; requires agencies to maintain an office dedicated to aircraft management; establishes flight program standards and performance indicators; and encourages the use of the Exchange/Sale program for replacing and disposing of aircraft. Other changes include broadening the definition of Government aircraft to include unmanned aircraft systems and the addition of definitions of Commercial Aviation Services (CAS), fixed costs, variable costs, performance indicator, and Senior Aviation Management Official (SAMO). Finally, for clarification and ease of use, the Circular is reorganized into separate parts for management, travel, and cost accounting.

OMB requests comments on these proposals as well as on other aspects of the Circular.

Lesley A. Field,

Acting Administrator for Federal Procurement Policy.

To the Heads of Executive Departments and Establishments

Subject: Improving the Management and Use of Government Aircraft

1. *Purpose.* This Circular is issued to minimize cost and improve the management, safety and efficiency of Government aviation activities. It prescribes policies to be followed by Executive Agencies in acquiring, managing, using, disposing of, and accounting for costs of aircraft.

2. *Supersession Information.* This Circular rescinds and supersedes OMB Circular No. A–126, Improving the Management and Use of Government Aircraft, dated May 22, 1992.

3. *Authority.* This Circular is issued pursuant to 41 U.S.C. 1121 and 31 U.S.C. 1344.

4. *Overview.* In general, Government-wide policy guidance for use of Government aircraft restricts the operation to official purposes, *i.e.*, mission requirements, required-use, and other official travel; restricts travel on such aircraft; requires special review of such travel by senior officials or Non-Federal Travelers; and codifies policies for reimbursement. This Circular is being revised to respond to recommendations from the Federal aviation community that OMB's aviation guidance make a clearer distinction between policies that apply to the management of Government aircraft and policies that apply to travel on Government aircraft. This revision also formalizes General Services Administration (GSA) and agency roles in regulating and managing the Federal aviation programs that have evolved since the Circular was last revised in 1992.

This Circular applies to all Executive Agencies and to all Government aircraft except for aircraft used by or in support of the President or Vice President.

5. *Definitions.* For purposes of this Circular, the following definitions apply.

a. *Acquire* means to procure or otherwise obtain personal property, including by lease or rent (FMR 102–33.20).

b. *Aircraft* means any contrivance invented, used, or designed to navigate, or fly in, the air (49 U.S.C. 40102(a)(6)).

c. *Commercial Aviation Services (CAS)* include aircraft that are leased, lease-purchased, rented, chartered, hired under full service contracts, or hired under inter-service support agreements, and related support services.

d. *Crew Member* means a person assigned to perform duty in an aircraft during flight time (14 CFR part 1.1).

e. *Federal Traveler* means a person who travels as a Passenger, a Crew Member, or a Qualified Non-Crew Member, on a Government aircraft and who is either (1) a civilian employee of an Executive Agency including invitational travelers per 5 U.S.C. 5703; (2) a member of a uniformed or a foreign service of the United States Government; or (3) a contractor working under a contract with an Executive Agency.

f. *Fixed Costs* of operating aircraft are those that result from owning and supporting the aircraft and that do not vary according to aircraft usage. The specific fixed cost elements are defined in GSA's *Aircraft Cost Accounting Guide* and include, but are not limited to: Crew, maintenance, labor, parts, contracts, lease costs, operations overhead, administrative overhead, self-insurance costs, and depreciation.

g. *Full Coach Fare* means city pairs capacity-controlled fare. In the absence of availability of capacity-controlled city pairs, it is a city pairs unrestricted coach fare. If no city pair fare is available for that route, full coach fare is the lowest available coach fare available to the general public from any source between the day that the travel was planned and the day the travel occurred.

h. *Government Aircraft* means manned or unmanned aircraft operated for the exclusive use of an Executive Agency. Government aircraft include (1) Federal aircraft as defined in FMR 102–33.20; and (2) Aircraft hired as commercial aviation services (CAS).

i. *Governmental Function* means an activity undertaken by a government, such as national defense, intelligence missions, firefighting, search and rescue, law enforcement (including transport of prisoners, detainees, and illegal aliens), aeronautical research, or biological or geological resource management, which is a partial qualification for a Public Aircraft Operation as defined in 49 U.S.C. 40125.

j. *Mission Requirements* mean activities that constitute the discharge of an agency's Governmental functions. Such activities include, but are not limited to, the transport of troops and/or equipment, training related to the operation of or duties on board the aircraft, evacuation (including medical evacuation), intelligence and counter-narcotics activities, search and rescue, transportation of prisoners, use of defense attaché-controlled aircraft, aeronautical research and space and science applications, and other such activities. For purposes of this Circular, mission requirements do not include official travel to give speeches, to attend conferences or meetings, to make routine site visits, or to attend training not related to the operation of the aircraft.

k. *Non-Federal Traveler* means an individual who travels on a Government aircraft, but is not a Federal traveler. Dependents and other family members of Federal travelers who travel on Government aircraft are considered to be Non-Federal Travelers within this Circular.

l. *Official Travel* means (1) travel to meet mission requirements, (2) required-use travel, and (3) other travel to conduct non-mission agency business, either departure and return from one location, or between locations.

m. *Passenger* means a traveler who is not a Crew Member or a Qualified Non-Crew Member.

n. *Performance Indicator* means a numerical or qualitative term or value for reporting organizational activities and results, generally with respect to achieving specific goals related to outcomes, outputs, efficiency, and inputs. When applied to aircraft, performance indicators typically measure the effectiveness and efficiency of the processes involved with safely delivering aircraft services. Examples are Operations Scheduling Effectiveness; Aircraft Availability Rates; Non-Availability Rates; Mission Capable and Non-mission Rates; Non-airworthy Maintenance Rates; and Non-airworthy Supply Rates.

o. *Public Aircraft Operation* means the same as the term defined in 49 U.S.C. 40102 and 49 U.S.C. 40125.

p. *Qualified Non-Crew Member* means an individual, other than a member of the crew, aboard an aircraft (1) operated by the armed forces or an intelligence agency of the United States Government; or (2) whose presence is required to perform, or is associated with the performance of, a governmental function (49 U.S.C. 40125).

q. *Required-Use* means use of a Government aircraft for the travel of an Executive Agency officer or employee, where the use of the Government aircraft is required because of bona fide communications or security needs of the agency or exceptional scheduling requirements.

r. *Senior Aviation Management Official (SAMO)* means the person in an Executive Agency who is the agency's primary member of the Interagency Committee for Aviation Policy (ICAP). This person must be of appropriate grade and position to represent the agency and promote flight safety and adherence to standards.

s. *Senior Federal Officials* are individuals who are paid according to the Executive Schedule, including Presidential appointees who are confirmed by the Senate; employed in the U.S. Government's Senior Executive Service or an equivalent senior service; who is a civilian employee of the Executive Office of the President; who is appointed by the President to a position under section 105(a)(2)(A), (B), or (C) of title 3 U.S.C. or by the Vice President to a position under section 106(a)(1)(A), (B), or (C) of title 3 U.S.C.; or a contractor working under a contract with an Executive Agency who is paid at a rate equal to or more than the minimum rate for the Senior Executive Service, and has senior executive responsibilities. The term Senior Federal Official does not mean an active duty military officer.

t. *Transportation* means, for the purpose of this Circular, the act of moving personnel or passengers engaged in travel onboard a Government aircraft.

u. *Travel,* for purposes of reporting Senior Federal Travel, means on or in an aircraft while it is in flight. The origin and the destination may be different or the same. An example of the origin and the destination being the same is when the aircraft was used for observation from the air, *i.e.*, for storm evaluation.

v. *Variable costs* are the costs of operating aircraft that vary depending on how much the aircraft are used. The specific variable cost elements are defined in GSA's *Aircraft Cost Accounting Guide* and include, but are not limited to: crew costs; maintenance costs, labor, parts and contracts; engine overhaul; aircraft refurbishment; major component repairs; fuel, oxidants, and lubricants; lease costs and flight support.

6. *Policy.*

a. Managing Government Aircraft

i. Acquiring Government Aircraft

1. Executive Agencies must be authorized to acquire aircraft in accordance with 31 U.S.C. 1343.

2. An Executive Agency may not acquire more, larger, or more capable aircraft than it needs to carry out its official Government business.

3. Executive Agencies must choose the most cost-effective alternatives for acquiring aircraft and CAS. Aircraft selection should be based on need, a strong business case, and life-cycle cost analyses, which conform to the requirements in OMB Circular A–11, *Preparation, Submission and Execution of the Budget*, and its supplement, the *Capital Programming Guide.* Where performance of work by Federal employees may be involved, such as for aircraft maintenance, agencies shall also consider any other applicable policies used to compare the cost of Government and contractor performance.

ii. Operating Government Aircraft

1. Executive Agencies that operate Government aircraft (*i.e.*, both owned and hired aircraft) must:

a. Use them only for official purposes, *i.e.*, mission requirements, required-use, and other official travel.

b. Use them in the most operationally efficient and effective manner to accomplish these purposes.

c. Document all uses of such aircraft and retain that documentation for at least two years. At a minimum, the documentation of each use of Government aircraft must include:

i. The tail number of the aircraft;

ii. The date(s) used;

iii. The name(s) of the crew members and qualified non-crew members;

iv. The purpose(s) of the flight;

v. The cost(s) of flights conducted on Government aircraft used for political activities or required-use travel as identified in section 6.b.iii that require reimbursement. Cost(s) of flights for Senior Federal Officials and Non-Federal Travelers are also required for potential reporting to GSA;

vi. The route(s) flown and flight time; and

vii. The name(s) of all passengers, and an indication if any passenger is either a Senior Federal Official or a Non-Federal Traveler.

d. Unless otherwise exempt from reporting in accordance with FMR 102–33, provide any information requested by GSA on a routine or ad hoc basis on their aircraft inventory, costs, and utilization (flight hours).

2. Executive Agencies that only hire aircraft occasionally for specific flights, must either:

a. Establish an aviation program that complies with the requirements in paragraph 3 of this section (*i.e.*, a ''policy-compliant aviation program''), or

b. Hire those aircraft through an agency with a policy-compliant aviation program to assure that safety and other critical aviation program requirements are satisfied.

3. Executive Agencies or their components that own and/or operate aircraft, except agencies that only hire aircraft occasionally for specific flights, must:

a. Designate a Senior Aviation Management Official (SAMO) to serve as the primary member of the GSA Interagency Committee for Aviation Policy (ICAP) and provide an alternate for the primary member.

b. Maintain an office to carry out the agency's aircraft management responsibilities.

c. Periodically review the continuing need for each of their aircraft and the cost-effectiveness of their aircraft operations as directed by OMB Circular A–11 as well as other applicable policies used to compare the cost of Government and contractor performance.

d. Develop performance indicators that measure the impact on mission

accomplishment contributed by the aviation program and provide a tool for measuring the impact of future aviation program investments. Such information will be utilized in supporting budget requests and periodic agency reviews of the effectiveness of the aviation program's performance.

e. Comply with the internal control requirements of OMB Circular A–123 and assure that the appropriate internal controls for aviation management are included in the agency's Management Control Plan. Any material weaknesses in aviation programs are to be reported in the annual internal control reports to the President and the Congress.

f. Establish and enforce agency-specific flight program standards that include, but are not limited to, the following topics:

i. Management/administration
ii. Acquisition and disposal
iii. Operations
iv. Maintenance
v. Training
vi. Safety

g. Ensure that their flight program standards comply with all statutes required to qualify for Public Aircraft Operations status including 49 U.S.C. 40102(a)(41) and 49 U.S.C. 40125 and regulations that apply to Federal aviation activities, including GSA regulations and applicable Federal Aviation Administration (FAA) regulations. Also—

i. When using a Government aircraft to transport a Passenger or to transport Passengers or property for compensation or hire, the activity would not qualify as a Public Aircraft Operation, and the Executive Agency flight program standards must comply with the applicable FAA regulations for civil aircraft;

ii. When using Government aircraft to perform a Governmental Function, in accordance with 49 U.S.C. 40125, the Executive Agency flight program need only comply with agency-specific safety standards and with the applicable FAA regulations for all aircraft operating within the National Airspace System and not the safety standards and FAA regulations that apply only to civil aircraft (reference Pub.L. 85–726, Federal Aviation Act of 1958).

h. Use automated aircraft management information systems that comply with data standards and reporting requirements prescribed by GSA, as well as with the agency's internal information requirements, to:

i. Accumulate costs into the standard aircraft program cost elements prescribed in GSA regulations. The uses of these cost elements for various purposes are discussed in section 6.c Accounting for Aircraft Costs.

ii. Unless otherwise exempt from reporting in accordance with FMR 102–33, accumulate and report to GSA information on their Government aircraft inventory, costs, and utilization according to GSA's guidance.

iii. Accumulate data to support aviation performance indicators that measure the effectiveness of their operations, maintenance and logistics programs and the impact of the aviation program on mission performance.

i. Develop agency specific fleet management and modernization plans to optimize the use of Government aircraft through:

i. Sharing common aircraft, transferring, or disposing of underutilized aircraft;

ii. Reducing excessive aircraft operations and maintenance costs; and

iii. Disposing of aircraft that are no longer cost effective or no longer meet agency needs and acquiring replacement aircraft.

iii. Providing Government Aircraft Services to Other Activities

1. In general, agencies that own or operate aircraft are authorized in statute to use those aircraft to serve specific missions and/or agency components and are funded in appropriations acts to provide those services.

2. In a few cases, one agency may be authorized to provide aviation services to another agency without requiring reimbursement for those services, *e.g.*, the FAA is authorized to provide aviation support to the National Transportation Safety Board.

3. In most cases, however, servicing agencies that provide aviation services to requesting agencies under the Economy Act (31 U.S. Code 1535) are required to recover the actual costs from those entities receiving the service. This is typically handled as an Interagency Acquisition under the Economy Act.

iv. Replacing and Disposing of Government Aircraft

Agencies that want to replace aircraft are encouraged to use the Exchange/Sale Authority to do so. Under this authority, agencies are permitted to exchange or sell aircraft or aircraft parts that need to be replaced and apply the Exchange allowance or the Sale proceeds to the cost of the replacement aircraft or aircraft parts. Agencies that determine that their aircraft or aircraft parts are excess property and do not need replacement property may dispose of the aircraft or aircraft parts via donation, transfer, or sale. Guidance for using the Exchange/Sale Authority to replace aircraft or aircraft parts or for disposing of excess property is provided in regulations issued by the GSA.

b. Traveling on Government Aircraft

i. Who May Travel on Government Aircraft

Federal travelers who, for purposes of this Circular, include contractors traveling on official agency business, invitational travelers, Non-Federal Travelers and any other passengers, crewmembers, and qualified non-crewmembers may travel on Government aircraft, but only if they have authorization from an Executive Agency to do so.

ii. Approving Travel on Government Aircraft

1. *Who may approve travel on Government Aircraft.* All travel on Government aircraft must be authorized by the agency sponsoring the travel in accordance with its travel policies and this Circular and, when applicable, documented on an official travel authorization. Where possible, such travel must be approved by at least one organizational level above the person(s) traveling (*i.e.*, passengers, crewmembers, or qualified non-crewmembers) in advance and in writing. If review by a higher organizational level is not possible, or not applicable as in the case of non-Federal or invitational travelers, another appropriate approval is required. In an emergency situation, prior verbal approval with an after-the-fact written authorization by the agency's designated travel approving official is permitted.

2. *Special approval requirements for travel to meet Mission Requirements.* Each agency may establish its own approval requirements for travel to meet mission requirements.

3. *Special approval requirements for required-use travel.*

a. Use of Government aircraft may be required because of bona fide communications needs (*e.g.*, 24-hour secure communications are required), security reasons (*e.g.*, circumstances that present a clear and present danger to the traveler), or exceptional scheduling requirements (*e.g.*, a national emergency or other compelling operational considerations). This requirement may apply to travel for official, personal, or political purposes.

b. Required-use of Government aircraft for travel (*i.e.*, required-use travel) must be approved in advance and in writing by one of the following:

i. The President may determine that all travel, or travel in specified categories, by an agency head or other Federal official satisfies the criteria to qualify as required-use travel, or

ii. The agency head may determine in writing that all travel, or travel in

specified categories, by an officer or employee within the agency satisfies the criteria to qualify as required-use travel. This determination must also conform to written standards established by the agency head.

iii. If neither of the two preceding determinations applies, a Federal officer or employee must obtain written approval for all required-use travel on a trip-by-trip basis from the agency's senior legal official or his/her principal deputy. In special emergency situations, an after-the-fact written approval by an agency is permitted, but in either case, the approval must certify that the travel satisfies the criteria to qualify as required-use travel.

4. *Special approval requirements for other official travel.* An agency may approve other official travel on a Government aircraft under one or more of the following circumstances:

a. Sufficient capacity exists on a Government aircraft that will meet the traveler's flight requirements (*i.e.*, space-available). Agencies authorizing space available justification must ensure—

i. The aircraft is already scheduled for use for an official purpose;

ii. Such space-available use does not require a larger aircraft than needed for the official purpose;

iii. Such space-available use results only in minor additional cost to the Government; and either

iv. The Federal traveler or the dependent of a Federal traveler is stationed by the Government in a remote location that is not accessible to scheduled commercial airline service; or

v. The traveler is authorized to travel space-available under 10 U.S.C. 2648 Persons and supplies: Sea, land, and air transportation.

b. Use of a Government aircraft is the most cost-effective alternative that will meet the travel requirements. To ensure that a Government aircraft is the most cost-effective alternative for travel, the traveler's designated travel-approving official must—

i. Compare the cost of all reasonable travel alternatives, including:

1. The cost of the city-pair fare for scheduled commercial airline service or the cost of the lowest available full coach fare, if a city-pair fare is not available to the traveler.

2. The cost of using Government aircraft, whether owned or hired as a CAS.

3. Travel by other available modes of transportation that are capable of meeting the travel requirements.

ii. Consider the cost of non-productive or lost-work time while in travel status and other relevant costs (*e.g.*, landing fees, tolls, parking, etc.) when comparing the costs of using Government aircraft in lieu of scheduled commercial airline service and other available modes of transportation. NOTE: The cost of non-productive or lost-work time must be computed based on gross actual hourly costs to the Government. These hourly costs should include benefits, but may not include the use of multipliers based on salary, position, or any other factor.

iii. Approve the most cost-effective alternative that meets the agency's needs.

c. Scheduled commercial airline service is less expensive than Government aircraft, but no such service is reasonably available (*i.e.*, able to meet the traveler's departure and/or arrival requirements within a 24 hour period, unless the traveler demonstrates that extraordinary circumstances require a shorter period) to effectively fulfill the agency requirement.

5. *Special approval requirements for Senior Federal Officials and Non-Federal Travelers.* Use of Government aircraft for all official travel by Senior Federal Officials and Non-Federal Travelers (including members of families of such Senior Federal Officials) must be in conformance with an agency review and approval system that has been approved by OMB, or authorized in advance and in writing, on a trip-by-trip basis, by the senior legal official of the agency sponsoring the travel or his/her principal deputy, except for required-use travel authorized under paragraph 6.b.ii.3 Special Approval Requirements For Required-Use Travel. This special approval requirement also applies to Senior Federal Officials traveling space-available or as crewmembers or qualified non-crewmembers on a flight (*i.e.*, being transported from point to point). In an emergency situation, neither prior written nor prior verbal approval is required.

iii. Reimbursement for Use of Government Aircraft

1. *For travel other than required-use or space-available travel:*

a. Any incidental private activities (personal or political) of an employee undertaken on an employee's own time while on official travel must not result in any increase in the actual costs to the Government of operating the aircraft.

b. The Government must be reimbursed the appropriate share of the full coach fare for any portion of the time on the trip spent on political activities (except as provided in paragraph 6.b.iii.4. For Any Political Travel).

2. *For required-use travel.* The Government must be reimbursed as follows (except as may otherwise be required in paragraph 6.b.iii.4. For Any Political Travel) for required-use travel;

a. For a wholly personal or political trip, the full coach fare for the trip;

b. For an official trip during which the employee engages in political activities, the appropriate share of the full coach fare for the entire trip;

c. For an official trip during which the employee flies to one or more locations for personal reasons, the excess of the full coach fare of all flights taken by the employee on the trip over the full coach fare of the flights that would have been taken by the employee had there been no personal activities on the trip.

3. *For space-available travel.* For space-available travel other than for the conduct of agency business, whether on mission or other flights, the Government must be reimbursed at the full coach fare except (1) as authorized under 10 U.S.C. 2648 and regulations implementing the statute; and (2) by civilian personnel and their dependents in remote locations (*i.e.*, locations not reasonably accessible to regularly-scheduled commercial airline service). No reimbursement is required for space-available travel for the conduct of agency business.

4. *For any political travel.* Reimbursement must be made in the amount required by law or regulation (*e.g.*, 11 CFR 106.3) if greater than the amount otherwise required by the foregoing reimbursement rules.

iv. Documenting Travel on Government Aircraft.

In addition to the usual information provided on an official travel authorization (*e.g.*, the purpose of the travel, name and title of the approving official, date approved, funding source, etc.), authorizations for travel on Government aircraft should also document the justification for such travel as well as any special approvals required.

1. Travel to meet mission requirements must be noted as such and identify the mission(s).

2. Required-use travel must be noted as such, the criteria for its use cited, and any required approvals documented.

3. Other official travel must be noted as such and the justification for using Government aircraft documented, *i.e.*:

a. Space-available—Space is available on a Government aircraft that meets the traveler's flight requirements.

b. Cost—Use of Government aircraft is the most cost-effective alternative that will meet the travel requirements. If this justification is cited, the estimated cost

of the travel alternatives considered must be provided.

c. Lack of reasonable alternatives—For example, scheduled commercial airline service may be less expensive, but not reasonably available to meet the traveler's schedule requirements.

4. All travel authorizations for the use of Government aircraft by Senior Federal Officials and Non-Federal Travelers for mission requirements and other official travel must document all special approvals required.

v. Reporting Travel on Government Aircraft

1. Agencies that use Government aircraft for travel must report semi-annually to GSA each use of such aircraft for non-mission travel by Senior Federal Officials and any Non-Federal Travelers (except for travel authorized under 10 U.S.C. 2648 and regulations implementing that statute). This includes travel as a passenger, crewmember, or qualified non-crewmember.

2. Agencies that are included in the Intelligence Community, as identified in the National Security Act, 50 U.S.C. 3003, must maintain information on trips by Senior Federal Officials and Non-Federal Travelers, but the agencies are not required to report this information to GSA. The information must be made available to Congress or any other organization with the appropriate security clearance and oversight responsibility upon request.

3. Agencies must maintain data on required-use of Government aircraft, but are not required to submit this information to GSA. The information must be made available to Congress or any other organization with oversight responsibility upon request.

4. GSA will provide policies and reporting criteria to agencies that authorize travel on Government aircraft and administer the annual submission of a Senior Federal Travel Report to OMB.

c. Accounting for Aircraft Costs

The costs associated with agency aircraft programs must be accumulated to: (1) Justify acquisitions needed to support the agency's aviation program; (2) justify the use of Government aircraft in lieu of commercially available aircraft, and the use of one Government aircraft in lieu of another; (3) recover the costs of operating Government aircraft when appropriate; and (4) determine the cost effectiveness of various aspects of agency aircraft programs. To accomplish these purposes, agencies must accumulate their aircraft program costs in accordance with GSA's *Aircraft Cost Accounting Guide.* The remainder of this section presents guidance for accomplishing each of these purposes.

i. Justifying Aviation Program Acquisitions

When the Circular was revised in 1992, the principal OMB guidance affecting agencies' aviation program acquisition choices was OMB Circular A–76, ''Performance of Commercial Activities.'' Since that time, OMB has developed more comprehensive guidance for agency use in planning and justifying investments in capital assets, including capital assets needed to support aviation programs. This guidance is contained in OMB Circular A–11 and its supplement, the *Capital Programming Guide.* Taken together, these two documents provide the broad principles that agencies should use to establish capital planning processes for their aviation programs. It is critical that agencies be able to collect accurate costs for the acquisition and operation of all assets that comprise their aviation programs, including non-aircraft assets, where appropriate. These costs will be aggregated and presented for budget justification purposes in formats that meet the overall requirements of OMB Circular A–11 and are acceptable to the agencies' OMB Resource Management Offices (RMOs). The *Capital Programming Guide* requires agencies to consider OMB Circular A–76, as appropriate, when evaluating investment alternatives; *e.g.*, determining whether any aviation program activities qualify as inherently Governmental functions and justifying in-house operation of Government aircraft versus procurement of CAS.

ii. Justifying Use of Government Aircraft.

Agencies that use Government aircraft to support recurring travel between locations are encouraged to develop standard trip cost justification schedules, and must ensure that the costs used for such schedules are kept current. These schedules should summarize and compare the projected costs of using one or more specific types of agency aircraft (both owned and hired, as applicable) for travel between selected locations to the costs of using commercial airline service between those locations. Comparative costs for varying passenger loads should also be shown. Agencies that choose to use this approach should be able to see the minimum number of official travelers needed to justify the use of a particular aircraft or aircraft type for a trip between locations on the schedule. Agencies that are not able to use such schedules are required to do a cost justification on a case by case basis.

To make the cost comparisons necessary to justify the use of a Government aircraft, the agency must compare the actual cost of using a Government aircraft to the cost of using a commercial airline service. The actual cost of using a Government aircraft is either: (a) The amount that the agency will be charged by the organization (*e.g.*, another agency or a CAS provider) that provides the aircraft, (b) the variable cost of using the aircraft, if the agency operates its own aircraft; or (c) the variable cost of using the aircraft as reported to it by the owning agency, if the owning agency is not required to charge for the use of its aircraft.

Agencies should develop a variable cost rate for each aircraft or aircraft type (*i.e.*, make and model) in their inventories before the beginning of each fiscal year. These rates should be developed as follows:

1. Accumulate or allocate to the aircraft or aircraft type all historical costs (for the previous 12 months, or longer periods, as appropriate) grouped under the variable cost category defined in GSA regulations. These costs should be obtained from the agency's accounting system.

2. Reduce or eliminate short-term data volatilities, as needed, by factoring in or out seasonal, cyclic, and infrequent variable cost components, such as engine overhauls and accident repairs, and allocating those costs over time as appropriate.

3. Adjust the historical variable costs from Step 1 for inflation and for any known upcoming cost changes to project the new variable cost total. The inflation and escalation factors used must conform to OMB Circulars A–11 and A–76, as appropriate.

4. Divide the total variable costs of the aircraft or aircraft type by the flying hours corresponding to the historical data timeframe for the aircraft or aircraft type to compute the projected variable cost or usage rate (per flying hour).

To compute the variable cost of using an agency's own aircraft for a proposed trip, multiply the variable cost rate computed in Step 4 (above) by the estimated number of flying hours for the trip. The variable cost of using a Government aircraft for a trip should include, as appropriate, all time required to position or reposition the aircraft prior to and after the trip, if no follow-on trip is scheduled. If a follow-on trip requires any repositioning time, it should be charged with that time. If one aircraft mission (*i.e.*, a series of flights scheduled sequentially) supports multiple trips, the use of the aircraft for the total mission may be justified by comparing the actual cost of the entire

mission to the commercial airline costs for all the component trips.

The cost of using commercial airline services for the purpose of justifying the use of Government aircraft must:

1. Be the current Government contract fare or price or the lowest fare or price known to be available for the trip(s) in question;

2. include, as appropriate, any differences in the costs of any additional ground or air travel, per diem and miscellaneous travel (*e.g.*, taxis, parking, etc.), and lost employees' work time (computed at gross hourly costs to the Government, including benefits) between the two options; and

3. only include costs associated with passengers on official business. Costs associated with passengers traveling on a space-available basis may not be used in the cost comparison.

iii. Recovering Cost of Operation

Under the Economy Act of 1932, as amended, (31 U.S.C. 1535), and various acts appropriating funds or establishing working funds to operate aircraft, agencies are required to recover the costs of operating their aircraft for use by other agencies, other governments (*e.g.*, state, local, or foreign), or non-official travelers. Depending on the statutory authorities under which its aircraft were obtained or are operated, an agency may use either of two methods for establishing the rates charged for using its aircraft: (1) The full cost recovery rate or (2), the variable cost recovery rate.

The full cost recovery rate for an aircraft is the sum of the variable and fixed cost rates for that aircraft. The computation of the variable cost rate for an aircraft or aircraft type is described under paragraph 6.c.ii. Justifying Use of Government Aircraft. The fixed cost rate for an aircraft or aircraft type is computed as follows:

1. Accumulate from the agency's accounting system (for the previous 12 months or longer, as appropriate) the fixed costs listed in GSA Regulations that are directly attributable to the aircraft or aircraft type (*e.g.*, crew costs-fixed, maintenance costs-fixed, and aircraft lease-fixed).

2. Adjust the historical fixed costs from Step 1 for inflation and for any known upcoming cost changes, including contract price adjustments, to project the new fixed cost total. The inflation and escalation factors used must conform to OMB Circulars A–11 and A–76, as appropriate.

3. Add to the adjusted historical fixed costs amounts representing self-insurance costs and the annual depreciation or replacement costs, as described in GSA regulations.

4. Allocate operations and administrative overhead costs to the aircraft or aircraft type based on the percentage of total aircraft program flying hours attributable to that aircraft or aircraft type.

5. Compute a fixed cost recovery rate for the aircraft or aircraft type by dividing the sum of the projected directly attributable fixed costs (from Step 3) and the allocated fixed costs (from Step 4) by the annual flying hours projected for the aircraft or aircraft type.

6. To compute the full cost recovery rate of using a Government aircraft for a trip, add the variable cost rate for the aircraft or aircraft type to the corresponding fixed cost rate (computed in Step 5 above) and multiply the result by the estimated number of flying hours for the trip using the proposed aircraft.

The variable cost recovery rate for an aircraft or aircraft type is usually the same as the variable cost or usage rate described under paragraph 6.c.ii. Justifying Use of Government Aircraft. In the event that the requesting agency covers some of the costs included in the variable cost recovery rate, *e.g.*, fuel or crew costs, such costs are not incurred by the servicing agency and should be subtracted from cost recovery rate for that flight. If an agency decides to base the charge for using its aircraft solely on the variable cost recovery rate, it must recover the fixed costs of those aircraft from the appropriation which supports the mission for which the procurement of the aircraft was justified. In such cases, the fixed cost recovery rate may be expressed on an annual, monthly or flying hour basis.

iv. Determining Aircraft Program Cost Effectiveness

Although cost effectiveness measures are not the only performance indicators of the effectiveness of an agency's aircraft program, they can be very useful in identifying opportunities to reduce aircraft operational costs. These opportunities might include changing maintenance practices, purchasing fuel at lower costs, and the replacement of old, inefficient aircraft with aircraft that are more fuel efficient and have lower operations and maintenance costs.

The most common measures used to evaluate the cost effectiveness of various aspects of an aircraft program are expressed as the cost per flying hour or per passenger mile for certain types of aircraft costs. These measures may be developed using the Standard Aircraft Program Cost Elements and include, but are not limited to: Maintenance costs/flying hour, fuel and other fluids cost/flying hour, accident repair costs/flying hour (or per aircraft), and variable cost/passenger mile.

In coordination with the Interagency Committee for Aviation Policy (ICAP), GSA should assist in the development of aviation performance indicators that agencies can use, within the context of their various missions and unique operating environments, to assess the cost-effective management of their aircraft.

7. *Agency Responsibilities.*

a. The head of each Executive Agency must issue the appropriate internal agency directives to implement this Circular within 180 days of its publication. These internal agency directives must include all policies contained in this Circular that apply to the agency's use of Government aircraft, and may contain additional policies unique to the agency.

i. Agencies that own or hire aircraft must assure that their internal directives comply with section 6.a. of this Circular.

ii. Agencies that use Government aircraft to support their travel requirements must assure that their internal travel policies are consistent with section 6.b. of this Circular.

b. The Secretaries of Defense and the uniformed services, the Secretary of State and GSA must incorporate the applicable policies of this Circular into the travel regulations that they publish for uniformed service, foreign service, and civilian employees, respectively. The necessary changes to these regulations should be issued no later than 180 days from the date of this Circular.

c. GSA shall maintain an office to implement Government-wide responsibilities for Government aviation program management that include, but are not limited to, the following:

i. Organizing and maintaining an interagency committee composed of Federal agency senior aviation management officials who advise the Administrator of General Services on Government aircraft policy and management.

ii. Coordinating the development of effectiveness measures, policy recommendations, and guidance for the procurement, operation, safety, and disposal of Government aircraft consistent with section 6.a. of this Circular.

iii. Providing policy recommendations and guidance on the use of Government aircraft to conduct official business.

iv. Operating a Government-wide information system to collect, analyze, and report agency information on Government aircraft.

v. Developing and maintaining common, generic aircraft information

system standards (*i.e.*, data definitions and software specifications) for agencies' use in developing their own internal aircraft information systems and for routine and ad hoc reporting of their information to GSA. These data definitions will also include aircraft program cost element definitions and standards to account for aircraft costs consistent with section 6.c. of this Circular.

vi. Providing to OMB and, upon request to Congress and other official requestors, analytical reports of the information collected and maintained in the Government-wide aircraft management information system as well as information collected from agencies on an ad hoc basis. Such reports should include, but not be limited to:

1. Aviation related reports that may be required by OMB and other Executive guidance.

2. An annual aviation data set that includes an inventory of agency-owned aircraft and the costs and flight hours associated with each agency's flight operations performed by both agency-owned and CAS aircraft.

3. Periodic reports on the utilization of the Exchange/Sale Authority for aircraft and aircraft parts.

vii. Upon a Federal agency's request, conduct external audits, surveys or reviews of Federal agency aviation programs to identify weaknesses and/or to recommend improvements as needed to increase the efficiency and the effectiveness, as well as to improve the safety culture of Federal agency aviation programs.

viii. Reviewing agency aircraft policies for compliance with Federal regulation and guidance as needed.

ix. Developing, coordinating and providing training, through workshops and other means, to agency aviation professionals on aviation safety, fleet modernization, and any other subjects approved by the ICAP.

8. *Reports to OMB.* GSA will submit a Senior Federal Travel Report to OMB annually. GSA will also submit the following items to OMB upon request:

a. Aviation related reports.

b. Annual aviation data sets.

c. Exchange/Sale authority utilization reports.

9. *Related Guidance.* OMB Circular A–11 and its supplement the *Capital Programming Guide.*

10. *Effective Date.* This Circular is effective upon publication.

11. *Information Contact.* All inquiries should be addressed to the Office of Federal Procurement Policy, Office of Management and Budget, telephone number (202) 395–1158.

[FR Doc. 2016–26464 Filed 11–1–16; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–040 and 52–041; NRC–2009–0337]

Combined License Application for Turkey Point Nuclear Plant, Units 6 and 7

AGENCY: Nuclear Regulatory Commission.

ACTION: Final environmental impact statement; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) and the U.S. Army Corps of Engineers (USACE), Jacksonville District, are issuing the final environmental impact statement (EIS), NUREG–2176, ''Environmental Impact Statement for Combined Licenses (COLs) for Turkey Point Nuclear Plant, Units 6 and 7,'' to support the environmental review for the combined license application Florida Power and Light Company (FPL) submitted an application for COLs to construct and operate two new nuclear power plants at its Turkey Point site near Homestead, Florida.

DATES: The final EIS is available as of October 28, 2016.

ADDRESSES: Please refer to Docket ID NRC–2009–0337, when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2009–0337. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC'S Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents,'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The final EIS is available in ADAMS under Accession Nos. ML16300A104, ML16300A137, ML16301A018, and ML16300A312, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *Project Web site:* The final EIS can be accessed online at the Turkey Point COL specific Web page at *http://www.nrc.gov/reactors/new-reactors/col/turkey-point.html.*
- *South Dade Regional Library and Homestead Branch Library:* The final EIS is available for public inspection at 10750 SW 211th Street, Cutler Bay, Florida 33189; 700 N. Homestead Blvd., Homestead, Florida 33030.

FOR FURTHER INFORMATION CONTACT: Alicia Williamson Dickerson, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1878, email: *Alicia.Williamson@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 51.118 of title 10 of the *Code of Federal Regulations,* the NRC is issuing NUREG–2176, ''Environmental Impact Statement for Combined Licenses (COLs) for Turkey Point Nuclear Plant, Units 6 and 7.'' A notice of availability of the draft EIS was published by the NRC in the **Federal Register** on March 5, 2015 (80 FR 12043) and also noticed by the U.S. Environmental Protection Agency on March 6, 2015 (80 FR 12172). The public comment period closed on May 22, 2015. During the course of the comment period, the NRC received requests from members of the public, a Tribal government and Federal agencies to extend the comment period. The NRC reopened the comment period on the draft EIS from May 28, 2015, until July 17, 2015 (80 FR 30501); public comments are addressed in Appendix E in the final EIS. The final EIS is available for public inspection as indicated in the **ADDRESSES** section of this document.

The final EIS also supports the USACE's review and was prepared in accordance with the National Environmental Policy Act of 1969, as amended. The final EIS also supports the Department of the Army's permit application for certain construction activities at the proposed Turkey Point, Units 6 and 7 site. The USACE's Department of the Army permit application number for Turkey Point, Units 6 and 7 project is (SAJ–2009–

02417). The USACE's Public Interest Review will be part of its Record of Decision and is not addressed in the final EIS.

II. Discussion

As discussed in the final EIS, the NRC staff's recommendation related to the environmental aspects of the proposed action is that the COLs should be issued. This recommendation is based on: (1) The Environmental Report (ER) submitted by FPL, as revised; (2) consultation with Federal, State, Tribal, and local agencies; (3) the NRC staff's independent review; (4) the NRC staff's consideration of comments received during the environmental review; and (5) the assessments summarized in the final EIS, including the potential mitigation measures identified in the ER and in the final EIS. In addition, in making its recommendation, the NRC staff has concluded that there are no environmentally preferable or obviously superior sites in the region of interest.

Dated at Rockville, Maryland, this 27th day of October, 2016.

For the Nuclear Regulatory Commission.

Francis M. Akstulewicz,

Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016–26456 Filed 11–1–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0214]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** (FR) on October 25, 2016, regarding notice of issuance of amendments to facility operating licenses and combined licenses. This action is necessary to correct an administrative error.

DATES: The correction is effective November 2, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0214 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0214. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1384, email: *Janet.Burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** on October 25, 2016, in FR Doc. 2016–25641, on page 73445, second column, line 33, correct ''enclosed with the amendments'' to read ''enclosed with the letter dated May 6, 2016 (ADAMS Accession No. ML16096A266).''

Dated at Rockville, Maryland, this 27th day of October 2016.

For the Nuclear Regulatory Commission.

George A. Wilson, Jr.,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–26461 Filed 11–1–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Product Change—Priority Mail and Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* November 2, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 26, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & Parcel Select Contract 2 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–13, CP2017–29.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–26409 Filed 11–1–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79174; File No. SR–NSX–2016–14]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Exchange Rule 11.26 To Correct Defective Numbering in the Interpretations and Policies of the Rule

October 27, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 2016, National Stock Exchange, Inc. (''NSX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Exchange Rule 11.26, Compliance with Regulation NMS Plan to Implement a Tick Size Pilot to correct defective numbering under the Interpretations and Policies of the rule. The Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

is not proposing any substantive amendments to the rule text.

The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[4]

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com*, at the principal office of the Exchange, and at the Commission's public reference room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make ministerial non-substantive changes to the numbering of the Interpretations and Policies sections of Rule 11.26. The changes are intended to address incorrect numbering that resulted from two recent amendments [sic] the rule filed by the Exchange. On September 28, 2016 the Commission noticed a proposed rule change filed by the Exchange to amend Rule 11.26, including certain sections of the Interpretations and Policies.[5] As part of these amendments, the Exchange proposed new text for section .09, which resulted a renumbering of former section .09 as .10. Section .10, with certain text proposed to be amended, was renumbered to .11; former .11 was renumbered as section .12, with no changes proposed to the text.

On September 29, 2016, the SEC noticed a proposed rule change filed by the Exchange to make further rule changes in connection with the Regulation NMS Plan to Implement a Tick Size Pilot, including an amendment to Rule 11.26, Interpretations and Policies.[6] The filing should have reflected that the language of Interpretations and Polices .12 was being replaced and that the former language of Interpretations and Policies .12 was being added as Interpretations and Policies .13. However, the Exchange, in its filing incorrectly assigned the number .11 where it should have used .12 and incorrectly assigned the number .12 where it should have used .13. As a result, two separate sections of the Interpretations and Policies are designated as number .11. The Exchange proposes to correct this error by amending the numbering associated with these sections. The section that was incorrectly numbered .11 will become .12 and the section previously incorrectly numbered .12 will become .13.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the proposal is designed to correct an administrative error from a previous filing that resulted in incorrect numbering of certain sections of Rule 11.26, Interpretations and Policies. Correcting these errors will avoid confusion and will promote clarity and ease of reference in the Exchange's rules and is consistent with Section 6(b)(5) of the Act in that it will promote just and equitable principles of trade and the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended to correct defective numbering in the Interpretations and Policies of Rule 11.26 and raises no competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [9] of the Act and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed changes are ministerial and the Commission granted a similar waiver of the 30-day operative delay in its notice of the rule changes that contained the original incorrect numbering.[13] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed changes are non-substantive and will provide clarity to the Exchange's rules. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[14]

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[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 78960 (September 28, 2016), 81 FR 68476 (October 4, 2016) (SR–NSX–2016–12).

[6] *See* Securities Exchange Act Release No. 78987 (September 29, 2016), 81 FR 69123 (October 5, 2016) (SR–NSX–2016–13).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See supra* notes 5 and 6.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2016–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NSX–2016–14. This file number should be included in the subject line if email is used. To help the Commission process and review comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. eastern time. Copies of such filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR–NSX–2016–14 and should be submitted on or before November 23, 2016.

For the Commission by the Division of Trading and Markets, pursuant to the delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2016–26403 Filed 11–1–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32340; File No. 812–14472]

NF Investment Corp., et al.; Notice of Application

October 27, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order to amend a prior order under sections 17(d), 57(a)(4) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d), 57(a)(4) and 57(i) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order (''Order'') to amend a prior order to permit certain business development companies (''BDCs'') and closed-end investment companies to co-invest in portfolio companies with each other and with certain other affiliated investment funds and broker-dealers. The Order would supersede the prior order.[1]

APPLICANTS: NF Investment Corp. (''NFIC''); Carlyle GMS Finance, Inc. (''CGMSF,'' and together with NFIC, the ''Existing Regulated Funds''); NFIC SPV LLC (''NFIC Sub''); Carlyle GMS Finance SPV LLC (''CGMSF Sub'''); Carlyle GMS Finance MM CLO 2015–1 LLC (''2015–1 Issuer,'' and together with CFMSF Sub and NFIC Sub, the ''Existing SPV Subs'') (collectively, the ''Existing Co-Investment Affiliates''); Carlyle GMS Investment Management L.L.C. (''CGMSIM'') on behalf of itself and its successors; [2] and TCG Securities, L.L.C. (''TCG'').

FILING DATES: The application was filed on May 22, 2015, and amended on October 8, 2015, March 30, 2016, and August 4, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 21, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549–1090. Applicants: Carlyle GMS Finance, Inc., 520 Madison Avenue, 38th Floor, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811 or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. CGMSF and NFIC are both Maryland corporations organized as non-diversified, closed-end management investment companies that have elected to be regulated as BDCs under Section 54(a) of the Act.[3] The Objectives and Strategies [4] of both

[15] 17 CFR 200.30–3(a)(12).

[1] NF Investment Corp., *et al.,* Investment Company Act Rel. Nos. 30900 (Jan. 31, 2014) (notice) and 30968 (Feb. 26, 2014) (order).

[2] The term ''successor'' as applied to CGMSIM means an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

[3] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[4] ''Objectives and Strategies'' means the investment objectives and strategies of a Regulated Fund (as defined below), as described in the filings made with the Commission by the Regulated Fund

Continued

CGMSF and NFIC are to generate current income and capital appreciation primarily through debt investments in U.S. middle market companies. The board of directors of NFIC and CGMSF (each a ''Board'') will be comprised of directors, a majority of whom will not be ''interested persons,'' within the meaning of section 2(a)(19) of the Act (the ''Non-Interested Directors'') of NFIC or CGMSF. The Existing SPV Subs are each an SPV Sub (defined below) of either NFIC or CGMSF.

2. CGMSIM is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and serves as the investment adviser to the Existing Regulated Funds. CGMSIM is a Delaware corporation and a wholly owned subsidiary of The Carlyle Group L.P. (''Carlyle'').

3. TCG, a wholly owned subsidiary of Carlyle, is registered as a limited purpose broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act'') and is a Delaware limited liability company that, from time to time, may hold various assets in a principal capacity. When acting in this capacity, TCG, and any other future wholly or majority owned broker-dealer subsidiaries of Carlyle and any future wholly owned subsidiaries of such broker-dealer subsidiaries who intend to participate in the Co-Investment Program are collectively referred to as the ''Capital Markets Affiliates.''

4. Applicants seek an Order to permit a Regulated Fund [5] (or any SPV Sub, as defined below), on the one hand, and one or more Co-Investment Affiliates,[6] on the other hand, to participate in the same investment opportunities through a co-investment program (the ''Co-Investment Program'') where such participation would otherwise be prohibited under sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act by (a) co-investing with each other in securities issued by issuers in private placement transactions in which an Investment Adviser negotiates terms in addition to price; [7] and (b) making additional investments in securities of such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers (''Follow-On Investments''). ''Co-Investment Transaction'' means any transaction in which any of the Regulated Funds (or any SPV Sub) participated together with one or more Co-Investment Affiliates in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which any of the Regulated Funds (or any SPV Sub) could not participate together with one or more Co-Investment Affiliates without obtaining and relying on the Order.[8]

5. Applicants state that a Regulated Fund may, from time to time, form one or more SPV Subs.[9] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Co-Investment Affiliate because it would be a company controlled by its parent Regulated Fund for purposes of sections 17(d) and 57(a)(4) and rule 17d–1. Applicants request that each SPV Sub be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the SPV Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a SPV Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the SPV Sub. The Board would make all relevant determinations under the conditions with regard to a SPV Sub's participation in a Co-Investment Transaction, and the Board would be informed of, and take into consideration, any proposed use of a SPV Sub in the Regulated Fund's place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its SPV Subs, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the SPV Sub.

6. When considering Potential Co-Investment Transactions for any Regulated Fund, the applicable Investment Adviser will consider only the Objectives and Strategies, investment policies, investment positions, capital available for investment (''Available Capital''),[10] and other factors relevant to such Regulated Fund. Upon issuance of the Order, the Investment Adviser to a Co-Investment Affiliate or the Co-Investment Affiliates (in the case of Capital Market Affiliates) will refer to the Investment Advisers of the Regulated Funds all Potential Co-Investment Transactions within a Regulated Fund's Objectives and Strategies that are considered for or by a Co-Investment Affiliate, and such investment opportunities may result in a Co-Investment Transaction. A Capital Markets Affiliate would have the opportunity to participate in a Co-Investment Transaction only if the demand for a Potential Co-Investment Transaction from the Regulated Funds and the other Co-Investment Affiliates is less than the total investment opportunity presented by such Potential Co-Investment Transaction.

7. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), the applicable Investment Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board that are eligible to vote under section 57(o) of the Act (''Eligible Directors''). The ''required

under the Exchange Act or under the Securities Act of 1933 (the ''Securities Act'') and the Act, and the Regulated Fund's reports to shareholders.

[5] ''Regulated Fund'' means any of the Existing Regulated Funds and any Future Regulated Fund. ''Future Regulated Fund'' means any future closed-end management investment company that (a) has elected to be regulated as a BDC or is registered under the Act; (b) will be advised by an Investment Adviser and (c) that intends to participate in the Co-Investment Program (as defined below). The term ''Investment Adviser'' means (a) CGMSIM and (b) any future investment adviser controlling, controlled by, or under common control with CGMSIM and is registered as an investment adviser under the Advisers Act.

[6] ''Co-Investment Affiliates'' means (a) the Existing Co-Investment Affiliates, (b) any Capital Markets Affiliate, or (c) any Regulated Fund, SPV Sub, or Private Fund. ''Private Fund'' means any entity (a) whose investment adviser is an Investment Adviser; (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act; and (c) that intends to participate in the Co-Investment Program.

[7] The term ''private placement transactions'' means transactions in which the offer and sale of securities by the issuer are exempt from registration under the Securities Act.

[8] All existing entities that currently intend to rely upon the Order have been named as applicants. Any other existing or future entity that relies on the Order in the future will comply with the terms and conditions of the application.

[9] ''SPV Sub'' means an entity that (a) is wholly-owned by a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (b) whose sole business purpose is to hold one or more investments on behalf of the Regulated Fund (and, in the case of an SBIC Subsidiary (as defined below), maintain a license under the SBA Act (as defined below) and issue debentures guaranteed by the SBA (as defined below)); (c) with respect to which the Regulated Fund's Board has the sole authority to make all determinations with respect to the SPV Sub's participation under the conditions of the application; and (d) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. ''SBIC Subsidiary'' means an SPV Sub that is licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958 (the ''SBA Act'') as a small business investment company.

[10] Available Capital consists solely of liquid assets not held for permanent investment, including cash, amounts that can currently be drawn down from lines of credit, and marketable securities held for short-term purposes. In addition, Available Capital would include bona fide uncalled capital commitments that can be called by the settlement date of the Co-Investment Transaction.

majority,'' as defined in section 57(o) of the Act (''Required Majority''),[11] of a Regulated Fund will approve each Co-Investment Transaction prior to any investment by the Regulated Fund.

8. With respect to the pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Co-Investment Affiliate and Regulated Fund in such disposition or Follow-On Investment is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

9. No Non-Interested Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

10. If an Investment Adviser, the principal owners of the Investment Adviser (''Principals''), or any person controlling, controlled by, or under common control with the Investment Adviser or the Principals, and the Co-Investment Affiliates (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as required under condition 16. Applicants believe that this condition will ensure that the Non-Interested Directors will act independently in evaluating the Co-Investment Program, because the ability of an Investment Adviser or the Principals to influence the Non-Interested Directors by a suggestion, explicit or implied, that the Non-Interested Directors can be removed will be limited significantly. Applicants represent that the Non-Interested Directors will evaluate and approve any such voting trust or proxy adviser, taking into accounts its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

[11] With respect to Regulated Funds that are not BDCs, the defined terms Eligible Directors and Required Majority apply as if each Regulated Fund were a BDC subject to section 57(o) of the Act.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company or a company controlled by such registered investment company unless the Commission has granted an order permitting such transactions. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC (or a company controlled by such BDC) in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to BDCs. Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 applies.

2. Applicants submit that the Investment Advisers and the entities that they advise would be deemed to be a person related to, or affiliated with, a Regulated Fund in a manner described by sections 17(d) or 57(b) and therefore prohibited by sections 17(d) or 57(a)(4) and rule 17d–1 from participating in the Co-Investment Transactions. Further, because the SPV Subs are controlled by the Regulated Funds, the SPV Subs are subject to sections 17(d) or 57(a)(4) and would be prohibited by rule 17d–1 from participating in the Co-Investment Transactions without the Order. Finally, because each Capital Markets Affiliate is under common control with CGMSIM and, therefore, is an ''affiliated person'' of CGMSIM, each Capital Markets Affiliate could be deemed to be a person related to a Regulated Fund (or an SPV Sub) in a manner described by section 17(d) or section 57(b) and also prohibited from participating in the Co-Investment Program.

3. Rule 17d–1 under the Act generally prohibits participation by a registered investment company, or a company controlled by such registered investment company, and an affiliated person (as defined in section 2(a)(3) of the Act) or principal underwriter for that investment company, or an affiliated person of such affiliated person or principal underwriter, in any joint enterprise or other joint arrangement or profit sharing plan, as defined in the rule, absent an order by the Commission. Similarly, rule 17d–1, as made applicable to BDCs by section 57(i), prohibits any person who is related to a BDC in a manner described in section 57(b), acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the BDC (or a company controlled by such BDC) is a participant, absent an order from the Commission. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

4. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each time an investment adviser to any Co-Investment Affiliate or a Co-Investment Affiliate considers a Potential Co-Investment Transaction for a Co-Investment Affiliate that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's Investment Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of such Regulated Fund's then-current circumstances.

2. (a) If the Investment Adviser deems the Regulated Fund's participation in any such Potential Co-Investment Transaction is appropriate for the Regulated Fund, it will then determine

an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by an Investment Adviser to be invested by the Regulated Fund in the Potential Co-Investment Transaction together with the amount proposed to be invested by the other Co-Investment Affiliates, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's Available Capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each. The Investment Advisers will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating Co-Investment Affiliate's Available Capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the Investment Adviser will distribute written information concerning the Potential Co-Investment Transaction, including the amount proposed to be invested by each Co-Investment Affiliate, to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with Co-Investment Affiliates only if, prior to such Regulated Fund's and any Co-Investment Affiliates' participation in the Potential Co-Investment Transaction, a Required Majority of such Regulated Fund concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching of such Regulated Fund or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) The interests of the shareholders of such Regulated Fund; and

(B) such Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by the Co-Investment Affiliates would not disadvantage such Regulated Fund, and participation by such Regulated Fund is not on a basis different from or less advantageous than that of any Co-Investment Affiliate; provided, that if a Co-Investment Affiliate, other than such Regulated Fund, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the Investment Advisers agree to, and do, provide, periodic reports to such Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Co-Investment Affiliate or any affiliated person of a Co-Investment Affiliate receives in connection with the right of the Co-Investment Affiliate to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Co-Investment Affiliates (the Co-Investment Affiliates (other than the Regulated Funds) may, in turn, share their portion with their affiliated persons)) and the applicable Regulated Fund in accordance with the amount of each party's investment; and

(iv) the proposed investment by such Regulated Fund will not benefit the Investment Advisers or the Co-Investment Affiliates or any affiliated person of either of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by sections 17(e) and 57(k) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Investment Adviser will present to the Board of the Regulated Fund, on a quarterly basis, a record of all investments made by the Co-Investment Affiliates in Potential Co-Investment Transactions during the preceding quarter that fell within such Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board of such Regulated Fund pursuant to this condition will be kept for the life of such Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,[12] a Regulated Fund will not invest in reliance on the Order in any issuer in which any Co-Investment Affiliate or any affiliated person of a Co-Investment Affiliate is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for such Regulated Fund as for the Co-Investment Affiliates. The grant to a Co-Investment Affiliate, but not such Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Co-Investment Affiliate elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Investment Adviser or Co-Investment Affiliate (only as to clause (i)) will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to other Co-Investment Affiliates.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Co-Investment Affiliate in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to

[12] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of each Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the applicable Investment Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Co-Investment Affiliate will bear its own expenses in connection with any such disposition.

8. (a) If any Co-Investment Affiliate desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the Investment Adviser or Co-Investment Affiliate (only as to clause (i)) will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Co-Investment Affiliate in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the applicable Investment Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Co-Investment Affiliate's outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the applicable Investment Adviser to be invested by such Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the other Co-Investment Affiliates in the same transaction, exceeds the amount of the opportunity, then the amount invested by each such party will be allocated among them pro rata based on each participant's Available Capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by any Co-Investment Affiliate that the applicable Regulated Fund considered but declined to participate in, so that the Non-Interested Directors may determine whether all investments made during the preceding quarter, including those investments which such Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually the continued appropriateness for the applicable Regulated Fund of participating in new and existing Co-Investment Transactions. All information presented to such Regulated Fund's Board pursuant to this condition will be kept for the life of such Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f).

11. No Non-Interested Director of a Regulated Fund also will be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the 1940 Act) of any Co-Investment Affiliate (other than any other Regulated Fund).

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the applicable Investment Adviser under its respective investment advisory agreement with the applicable Regulated Fund or other Co-Investment Affiliate, be shared by such Regulated Fund and each Co-Investment Affiliate in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee [13] (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) or 57(k) of the Act, as applicable) received in connection with a Co-Investment Transaction will be distributed to the participating applicable Regulated Fund and the Co-Investment Affiliates on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by the Investment Advisers of Co-Investment Affiliates pending consummation of the transaction, the fee will be deposited into an account maintained by the Investment Advisers of the Co-Investment Affiliates at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata between such Fund and the Co-Investment Affiliates based on the amounts they invest in such Co-Investment Transaction. None of the Co-Investment Affiliates, their investment advisers, nor any affiliated person (as defined in the Act) of the Regulated Funds or the Co-Investment Affiliates will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of Co-Investment Affiliates, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C) and (b) in the case of the Investment Advisers, investment advisory fees paid in accordance with the agreements between such Investment Advisers and the Co-Investment Affiliates).

14. The Capital Markets Affiliates will not be permitted to invest in a Potential Co-Investment Transaction except to the extent the demand from the Regulated Funds and the other Co-Investment Affiliates is less than the total investment opportunity.

15. The Investment Advisers will maintain written policies and procedures reasonably designed to ensure compliance with the foregoing Conditions. These policies and procedures will require, among other things, that each of the applicable Investment Advisers will be notified of

[13] Applicants are not requesting any relief for transaction fees received in connection with any Co-Investment Transaction.

all Potential Co-Investment Transactions that fall within each Regulated Fund's then-current Objectives and Strategies and will be given sufficient information to make its independent determination and recommendations under conditions 1, 2(a), 7 and 8.

16. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party (such as the trustee of a voting trust or a proxy adviser) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any matters requiring approval by the vote of a majority of the outstanding voting securities, as defined in section 2(a)(42) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2016–26401 Filed 11–1–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79173; File No. SR–NYSEArca–2016–62]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to a Change to the Underlying Index for the PowerShares Build America Bond Portfolio

October 27, 2016.

On May 3, 2016, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Permit the continued listing and trading of shares of the PowerShares Build America Bond Portfolio (''Fund'') following a change to the index underlying the Fund, and (2) propose changes to the index underlying the Fund and the name of the Fund. The proposed rule change was published for comment in the **Federal Register** on May 23, 2016.[3] On June 27, 2016, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On August 12, 2016, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act [7] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on May 23, 2016. November 19, 2016 is 180 days from that date, and January 18, 2017 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[8] designates January 18, 2017 as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2016–62).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Brent J. Fields,

Secretary.

[FR Doc. 2016–26404 Filed 11–1–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79171; File No. SR–NYSEArca–2016–101]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to the Listing and Trading of Shares of SolidX Bitcoin Trust Under NYSE Arca Equities Rule 8.201

October 27, 2016.

On July 13, 2016, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the SolidX Bitcoin Trust (''Trust'') under NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on August 2, 2016.[3]

On September 6, 2016, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comments on the proposed rule change.

This order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal [7]

The Exchange proposes to list and trade the Shares under NYSE Arca

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77849 (May 17, 2016), 81 FR 32371.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 78157, 81 FR 43327 (July 1, 2016). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated August 21, 2016 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] *See* Securities Exchange Act Release No. 78564, 81 FR 55247 (August 18, 2016). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' *See id.* at 55250.

[7] 15 U.S.C. 78s(b)(2).

[8] *Id.*

[9] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78426 (Jul. 27, 2016), 81 FR 50763 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 78770, 81 FR 62780 (Sept. 12, 2016). The Commission designated October 31, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] The Commission notes that additional information regarding the Trust and the Shares can

Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[8] Each Share will represent a fractional undivided beneficial interest in the Trust's net assets. SolidX Management LLC will be the sponsor of the Trust (''Sponsor''). The Bank of New York Mellon will be the administrator and the custodian, with respect to cash, for the Trust.

According to the Exchange, the Trust will normally hold only bitcoins as an asset, but may hold a limited amount of cash in connection with the creation and redemption process and to pay Trust expenses. The investment objective of the Trust is to provide investors with exposure to the daily change in the U.S. dollar price of bitcoin, before expenses and liabilities of the Trust, as measured by the TradeBlock XBX Index (''XBX'').

The Trust intends to achieve this objective by investing substantially all of its assets in bitcoin traded on various domestic and international bitcoin exchanges and OTC markets, depending on liquidity and other factors at the Sponsor's discretion. The Trust is not actively managed and will not engage in activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of bitcoin. The Trust will generally use the XBX to calculate the Trust's net asset value (''NAV'') on each business day that the NYSE Arca is open for regular trading, as promptly as practicable after 4:00 p.m., Eastern time (''E.T.'').[9]

According to the proposal, given the novelty and unique digital characteristics of bitcoin as an innovative asset class, traditional custodians who normally custody assets do not currently offer custodial services for bitcoin. Accordingly, the Sponsor will secure the bitcoin held by the Trust using multi-signature ''cold storage wallets,'' which the Exchange describes as an industry best practice.[10]

The Trust will issue and redeem the Shares in ''Baskets'' only to certain Authorized Participants.[11] According to the Exchange, the creation and redemption of Baskets will principally be made in exchange for the delivery to the Trust, or the distribution by the Trust, of the amount of cash or bitcoin represented by the combined NAV of the Baskets being created or redeemed. This combined NAV will be based on the aggregate number of bitcoins represented by the Shares included in a Basket, as determined on the day an order to create or redeem the Basket is properly received.

According to the Exchange, Authorized Participants and market makers can hedge their exposure to bitcoin, whether creating and redeeming baskets in-kind or for cash, by using non-deliverable forward contracts (''NDFs'') or swap contracts that will create synthetic long or short exposure to bitcoin. NDFs will be offered by several participants, including the Sponsor itself, operating on a principal basis. Such arrangements, according to the Exchange, will make it possible for Authorized Participants that lack the trading infrastructure to transact in bitcoin to be able to hedge their exposure by entering into an NDF or a swap contract. In addition, according to the Exchange, the Sponsor will, to the extent requested by Authorized Participants and market makers, act as agent by buying and selling bitcoin on behalf of the Authorized Participants and market makers, including-short sale orders for hedging purposes.[12]

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2016–101 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [13] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[14] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [15]

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[16]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by November 23, 2016.

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be found in the Notice (*see supra* note 3) and the registration statement filed with the Commission on Form S–1 on July 11, 2016 under the Securities Act of 1933 (''Registration Statement''), as applicable. This additional information addresses the Trust's investment objectives, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of NAV, distributions, and taxes, as well as additional background information about bitcoins and the ''Bitcoin Network,'' including information relating to Bitcoin Network operations, bitcoin transfers and transactions, cryptographic security used in the Bitcoin Network, bitcoin mining and creation of new bitcoins, the mathematically controlled supply of bitcoins, and modifications to the bitcoin protocol, among other things.

[8] *See* NYSE Arca Equities Rule 8.201 (permitting the listing and trading of ''Commodity-Based Trust Shares,'' defined as a security ''(a) that is issued by a trust that holds a specified commodity deposited with the Trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity'').

[9] *See* Notice, *supra* note 3 (describing in greater detail the alternative procedures if the XBX cannot be utilized as the basis for NAV calculations).

[10] According to the Exchange, the Sponsor will employ security procedures, described in greater detail in the Notice and the Registration Statement, to safeguard the bitcoin assets of the Trust. *See* Notice and Registration Statement, *supra* notes 3 and 7, respectively.

[11] Each Basket will consist of 10,000 Shares, and the value of the Basket will be equal to the value of 10,000 Shares at their NAV per Share on that day.

[12] *See* Notice, *supra* note 3, 81 FR at 50771.

[13] 15 U.S.C. 78s(b)(2)(B).

[14] *Id.*

[15] 15 U.S.C. 78f(b)(5).

[16] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 7, 2016. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[17] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. There are currently no exchange-traded products (''ETPs'') available on U.S. markets that hold a digital asset such as bitcoins, which have neither a physical form (unlike commodities) nor an issuer that is currently registered with any regulatory body (unlike securities, futures, or derivatives), and whose fundamental properties and ownership can, by coordination among a majority of its network processing power, be changed (unlike any of the above). What are commenters' views about the current stability, resilience, fairness, and efficiency of the markets on which bitcoins are traded? What are commenters' views on whether an asset with the novel and unique properties of a bitcoin is an appropriate underlying asset for a product that will be traded on a national securities exchange? What are commenters' views on the risk of loss via computer hacking posed by such an asset? What are commenters' views on whether an ETP based on such an asset would be susceptible to manipulation?

2. According to the Exchange, the logic utilized for the derivation of the daily closing index level for the XBX is intended to analyze actual bitcoin transactional data, verify and refine the data set, and yield an objective, fair-market value of one bitcoin as of 4:00 p.m., E.T., each weekday, priced in U.S. dollars. What are commenters' views on the Trust's proposal to value its holdings based on XBX and on the methodology used by XBX? What are commenters' views on the alternative and sequential manner in which the Trust proposes to value its holdings in the event that the Sponsor determines that a rule has failed if a pricing source is unavailable or, in the judgment of the Sponsor, is deemed unreliable?

3. Given the novelty and unique digital characteristics of bitcoin as an asset class, and in the interest of adequate security and investor confidence in bitcoin control, what are commenters' views regarding the Trust's proposed security, control, and insurance measures?

4. The proposal states that bitcoin trades on more than 30 exchanges globally on a 24-hour basis and that, therefore, it is difficult for attempted market manipulation on any one exchange to affect the global market price of bitcoin. The proposal further states that any attempt to manipulate the price would result in an arbitrage opportunity among exchanges, which typically would be acted upon by market participants. What are commenters views on the cost and the efficiency of the arbitrage among the various global markets for bitcoin? What are commenters' views generally with respect to the liquidity and transparency of the bitcoin market, susceptibility to manipulation, and thus the suitability of bitcoins as an underlying asset for an ETP?

5. The proposal states that the dissemination of information on the Trust's Web site, along with quotations for and last-sale prices of transactions in the Shares and the intra-day indicative value and NAV of the Trust will help to reduce the ability of market participants to manipulate the bitcoin market or the price of the Shares. The proposal further states that the Trust's arbitrage mechanism will facilitate the correction of price discrepancies in bitcoin and the Shares and that demand from new investors accessing bitcoin through investment in the Shares will broaden the investor base in bitcoin, which could further reduce the possibility of collusion among market participants to manipulate the bitcoin market. What are commenters' views regarding these statements? Do commenters' agree or disagree with the assertion that Authorized Participants and other market makers will be able to make efficient and liquid markets in the Shares at prices generally in line with the NAV?

6. The proposal states that the Sponsor of the Fund may engage in principal trades of NDFs with market makers and Authorized Participants in order to facilitate hedging for Authorized Participants who do not possess the technical abilities to transact directly in bitcoin. In addition, to the extent requested by Authorized Participants and market makers, the Sponsor would act as agent by buying and selling bitcoin on behalf of the Authorized Participants and market makers. What are commenters' views on any potential conflict of interest that may be created by this arrangement, which would involve the Sponsor acting in a capacity other than as agent for the Fund? Would this arrangement affect the effectiveness and efficiency of the arbitrage mechanism and, if so, how? What other effects, if any, might this activity by the Sponsor have on the operation of the Fund?

7. Under the proposal, Baskets may be created or redeemed utilizing bitcoin or cash.[18] What are commenters' views on whether cash creations and redemptions are consistent with the requirements under NYSE Arca Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange?

8. Under the proposal, creation or redemption orders for the Fund would have to be submitted by 1:00 p.m. E.T. to be effected the same business day. The proposal also sets forth conditions under which the Fund's administrator may reject Basket purchase orders. One such condition would be ''if the Sponsor thinks it is necessary or advisable for any reason, which the Sponsor determines is in the best interests of the Trust or shareholders.'' Similarly, the proposal states that the Fund's administrator ''may, in its discretion, suspend the right of redemption or postpone the redemption settlement date (1) for any period during which an emergency exists as a result of which the redemption distribution is not reasonably practicable or (2) for such other period as the Sponsor determines to be necessary for the protection of the shareholders.'' What are commenters' views on the 1:00 p.m. cut-off for order submission and on the necessity and scope of the discretion to reject creation or redemption orders? Are these provisions likely to have an effect on the arbitrage mechanisms and, if so, how?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NYSEArca–2016–101.

[17] *See supra* note 3.

[18] *See supra* note 8; *see also* NYSE Arca Equities Rule 8.201 (specifically defining Commodity-Based Trust Shares as a security that is issued in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity, and that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity).

This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–101 and should be submitted on or before November 23, 2016. Rebuttal comments should be submitted by December 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Brent J. Fields,

Secretary.

[FR Doc. 2016–26405 Filed 11–1–16; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79187; File No. SR–NYSE–2016–58]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Amending Section 907.00 of the NYSE Listed Company Manual To Adjust the Timing of Entitlements to Complimentary Products and Services for Special Purpose Acquisition Companies

October 28, 2016.

I. Introduction

On August 26, 2016, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Section 907.00 of the NYSE Listed Company Manual (''Manual'') to adjust the timing of entitlements to certain complimentary products and services for special purpose acquisition companies. The proposed rule change was published in the **Federal Register** on September 13, 2016.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposed to amend Section 907.00 of the Manual to adjust the timing of certain entitlements to complimentary products and services for special purpose acquisition companies (''SPACs'') under that rule. In its filing, the Exchange stated that a SPAC is a special purpose company formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more operating businesses or assets.[4] The Exchange further stated that to qualify for initial listing, a SPAC must meet the requirements of Sections 102.01A [5] and 102.06 of the Manual. Section 102.06 of the Manual provides that the Exchange will consider on a case-by-case basis the appropriateness for listing of SPACs that conduct an initial public offering of which at least 90% of the proceeds, together with the proceeds of any other concurrent sales of the SPAC's equity securities, will be held in a trust account controlled by an independent custodian until consummation of a business combination in the form of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more operating businesses or assets with a fair market value equal to at least 80% of the net assets held in trust (a ''Business Combination'' or the ''Business Combination Condition'').[6]

As set forth in Section 907.00 of the Manual, the Exchange offers complimentary products and services for a period of 24 calendar months from the date of initial listing to a category of listed companies defined as ''Eligible New Listings.'' [7] Under the current rule, Eligible New Listings are defined as: (i) Any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security on the Exchange under Section 102.01 or 103.00 of the Manual for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering; and (ii) any U.S. or non-U.S. company emerging from a bankruptcy, spinoff (where a company lists new shares in the absence of a public offering), and carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering).

Currently, pursuant to Section 907.00 of the Manual, Eligible New Listings are eligible for services as either a Tier A or Tier B company.[8] Under Tier A, for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78782 (September 7, 2016), 81 FR 62937 (September 13, 2016) (''Notice'').

[4] *Id.* at 62938.

[5] Section 102.01A sets forth the minimum share distribution criteria for listing, and requires that companies listing in connection with an initial public offering have at least 400 holders of 100 shares or more and at least 1,100,000 publicly held shares.

[6] *See* Notice, *supra* note 3, at 62938. Section 102.06 also provides, among other things, that the SPAC must be liquidated if no Business Combination has been consummated within a specified time period not to exceed three years, and that the Exchange will promptly commence delisting procedures with respect to any SPAC that fails to consummate its Business Combination within (i) the time period specified by its constitutive documents or by contract or (ii) three years, whichever is shorter.

[7] Under Section 907.00 of the Manual the Exchange also offers certain complimentary products and services to ''Eligible Current Listings'' that satisfy the requirements of that Section as well as other products and services that all listed issuers are eligible to receive.

[8] The Commission previously found that providing these services and products to companies in different tiers is consistent with the Act, explaining that ''[w]hile not all issuers receive the same level of services, NYSE has stated that trading volume and market activity are related to the level of services that the listed companies would use in the absence of the complimentary services arrangements'' and that ''the criteria for satisfying

Continued

Eligible New Listings with a global market value of $400 million or more, calculated as of the date of listing on the Exchange, the Exchange offers market surveillance products and services (with a commercial value of approximately $55,000 annually), market analytics products and services (with a commercial value of approximately $30,000 annually), web-hosting products and services (with a commercial value of approximately $16,000 annually), web-casting products and services (with a commercial value of approximately $6,500 annually), corporate governance tools (with a commercial value of approximately $50,000 annually), and news distribution products and services (with a commercial value of approximately $20,000 annually) for a period of 24 calendar months from the date of listing. Under Tier B, for Eligible New Listings with a global market value of less than $400 million, calculated as of the date of listing on the Exchange, the Exchange offers web-hosting products and services (with a commercial value of approximately $16,000 annually), market analytics products and services (with a commercial value of approximately $30,000 annually), web-casting products and services (with a commercial value of approximately $6,500 annually), corporate governance tools (with a commercial value of approximately $50,000 annually), and news distribution products and services (with a commercial value of approximately $20,000 annually) for a period of 24 calendar months from the date of listing.[9]

Notwithstanding the foregoing, however, if an Eligible New Listing begins to use a particular product or service provided for under Section 907.00 within 30 days of its initial listing date, the complimentary period begins on the date of first use.

The Exchange has now proposed to amend Section 907.00 of the Manual to provide that a SPAC will no longer be deemed to be an Eligible New Listing at the time of its initial listing, and instead will be deemed to be an Eligible New Listing at such time as it has completed the Business Combination Condition, if it remains listed thereafter on the Exchange. Thus, under the proposal, a SPAC will no longer be eligible to receive complimentary products and services under Section 907.00 as an Eligible New Listing at the time of its initial listing, but will instead be entitled to receive such products and services if and when it meets the Business Combination Condition. A SPAC that remains listed on the Exchange after meeting the Business Combination Condition will be entitled to the complimentary products and services under Section 907.00 as an Eligible New Listing for a period of 24 months from the date on which it meets the Business Combination Condition. Notwithstanding the foregoing, however, if such a company begins to use a particular product or service provided for under Section 907.00 within 30 days of meeting the Business Combination Condition, the complimentary period for that product or service will begin on the date of first use.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.[10] Specifically, the Commission believes it is consistent with the provisions of Sections 6(b)(4) and (5) of the Act,[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission believes that the proposed rule change is consistent with Section 6(b)(8) of the Act[12] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that it is consistent with the Act for the Exchange to adjust the timing of when SPACs are eligible to receive complimentary products and services under Section 907.00 of the Manual as Eligible New Listings from the time of initial listing to the time that it completes a Business Combination Condition. The Exchange represented that SPACs are unlikely to utilize these complimentary products and services at the time of initial listing, but would likely find these products and services useful if they remain listed after they meet the Business Combination Condition.[13] The Exchange explained that at the time of initial listing, SPACs are typically not focused on their stock price and investor relations to the same degree as operating companies.[14] The Exchange stated that the complimentary products and services provided to Eligible New Listings under Section 907.00 are targeted in large part toward the market-driven concerns of newly-listed operating companies, and are therefore less useful to SPACs that have not met the Business Combination Condition.[15] The Exchange stated that a SPAC that has met the Business Combination Condition, on the other hand, is similarly situated to a newly-formed publicly-traded operating company.[16] Therefore, the Exchange said that it believes that the complimentary products and services provided to Eligible New Listings under Section 907.00 will be as relevant and attractive to a SPAC that has met the Business Combination Condition as to the newly-listed operating companies that are generally eligible for those services.[17]

In addition, the Exchange stated that in many cases SPACs will consider transferring to a new listing venue at the time they meet the Business Combination Condition, and that the proposed rule change will enable the Exchange to compete for the retention of these companies by offering them a package of complimentary products and services that assist their transition to becoming a publicly listed operating company for the first time.[18]

The Exchange also stated that it recognizes that not all SPACs will meet the Business Combination Condition and that some listed SPACs will therefore never become eligible for the additional complimentary products and services provided to Eligible New Listings under Section 907.00 that would be provided to an otherwise similarly qualified operating company that is newly-listed on the Exchange.[19] However, the Exchange reiterated that, given the specific characteristics of the SPAC structure, the complimentary products and services provided to Eligible New Listings under Section 907.00 are generally not of any

the tiers are the same for all issuers.'' *See* Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449, 51452 (August 18, 2011) (approving NYSE–2011–20) (''NYSE 2011 Order'').

[9] The Exchange noted that it does not propose to make any changes in its filing to the values of the various services provided to eligible listed companies discussed above, which values are specified in Section 907.00 of the Manual. *See* Notice, *supra* note 3, at 62938.

[10] 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] 15 U.S.C. 78f(b)(8).

[13] *See* Notice, *supra* note 3, at 62938–39.

[14] *Id.* at 62938. The Exchange stated in its filing that SPACs raise money on a one-time basis and typically trade at a price that is very close to their liquidation value. *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.* at 62939.

[19] *Id.*

particular value to a SPAC prior to meeting the Business Combination Condition, and the Exchange therefore believes that those SPACs that never meet the Business Combination Condition and therefore never qualify for these additional products and services provided to Eligible New Listings under Section 907.00 will not suffer any meaningful detriment as a consequence.[20]

As noted in the previous order approving Section 907.00 of the Manual, Section 6(b)(5) of the Act does not require that all issuers be treated the same; rather, the Act requires that the rules of an Exchange not unfairly discriminate between issuers.[21] In its proposal, the Exchange has made representations that reasonably justify treating a SPAC that decides to continue to list on the Exchange after meeting the Business Combination Condition similar to a newly-listed operating company. The Commission further notes that a SPAC that completes the Business Combination Condition will be receiving the same package of services as an Eligible New Listing and that it will not be receiving any additional benefits or services by virtue of the proposed rule change. The Commission notes that the rule proposal delays the timing of the additional complimentary products and services offered to an Eligible New Listing to the time the SPAC becomes an operating company. Up until that time, the listed SPAC is treated like any other currently listed company in that it would receive the complimentary products and services that all listed companies receive, and could also receive additional products and services if it so qualifies under the provisions for Eligible Current Listings.[22] The proposal does not alter these other services that a SPAC could receive when initially listed.

The Commission has previously found that the package of complimentary products and services offered to Eligible New Listings is equitably allocated among issuers consistent with Section 6(b)(4) of the Act and that describing the values of the products and services adds greater transparency to the Exchange's rules and to the fees applicable to such companies.[23] The Commission also previously noted that describing in the Manual the products and services available to listed companies and their associated values will ensure that individual listed companies are not given specially negotiated packages of products or services to list or remain listed that would raise unfair discrimination issues under the Act.[24]

Based on the foregoing, the Commission believes that the Exchange has provided a sufficient basis for adjusting the timing of when SPACs are eligible to qualify for additional complimentary products and services, as an Eligible New Listing under Section 907.00 of the Manual, from the time of the SPAC's initial listing to the time that a SPAC meets the Business Combination Condition, and that this change does not unfairly discriminate among issuers and is therefore consistent with the Act. For similar reasons, and as the value of the services offered are not changing, only the timing of when such services are provided to a SPAC, we find that the proposal is consistent with Section 6(b)(4) of the Act.

The Commission also believes that it is consistent with the Act for the Exchange to allow the complimentary period for a particular service as an Eligible New Listing to begin on the date of first use if a SPAC that has met the Business Combination Condition begins to use the service within 30 days after the date of meeting the Business Combination Condition. The Exchange stated in its filing that, in its experience, it can take companies a period of time to review and complete necessary contracts and training for the complimentary products and services under Section 907.00 following their becoming eligible for those services and that allowing this modest 30 day period, if the company needs it, will help to ensure that the company will have the benefit of the full period permitted under the rule to actually use the services, thereby enabling companies to receive the full intended benefit.[25] The Commission notes that Section 907.00 currently allows an Eligible New Listing to begin using services within 30 days of its initial listing date.[26] As noted in the NYSE 2015 Order, the Commission believes that this would provide only a short window of additional time to allow companies to finalize their contracts for the complimentary products and services. The Commission notes that under the proposed rule this additional 30 day window would only be available to SPACs that have determined to remain listed on the Exchange after meeting the Business Combination Condition and thereby treats such SPACs, at the time they qualify for listing as an operating company, the same as other newly-listed companies that qualify as Eligible New Listings under Section 907.00.[27]

The Commission believes that the Exchange is responding to competitive pressures in the market for listings in making this proposal. Specifically, the Exchange has represented that in many cases, SPACs will consider transferring to a new listing venue at the time they meet the Business Combination Condition, and that the proposed rule change would enable it to compete for the retention of these companies by offering them a package of complimentary products and services that assist their transition to being a publicly listed operating company for the first time.[28] Further, the Commission notes that other exchanges have filed similar rule changes with respect to the timing of complimentary services offered to SPACs under their rules,[29] and the Commission has recently approved one such rule change.[30] The Commission also notes that nothing in the Exchange's rules requires a SPAC to remain listed on the Exchange after it meets the Business Combination Condition and that such company is free to list on other markets. Accordingly, the Commission believes that the proposed rule reflects the current competitive environment for exchange listings among national securities exchanges, and is appropriate and consistent with Section 6(b)(8) of the Act.[31]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–NYSE–2016–58) be, and it hereby is, approved.

[20] *Id.*

[21] 15 U.S.C. 78f(b)(5); *see also* NYSE 2011 Order, *supra* note 8, at 51452.

[22] *See* Section 907.00 of the Manual; *see also* NYSE 2011 Order, *supra* note 8, at 51450. Under Section 907.00, all listed companies receive complimentary services through the Exchange's Market Access Center as well as 24 months of complimentary access to whistleblower hotline services. *See* Securities Exchange Act Release No. 76127 (October 9, 2015), 80 FR 62584 (October 16, 2015) (approving NYSE–2015–36) (''NYSE 2015 Order'').

[23] *See* NYSE 2011 Order, *supra* note 8, at 51452.

[24] *Id.*

[25] *See* Notice, *supra* note 3, at 62939.

[26] *See* NYSE 2015 Order, *supra* note 22.

[27] The Commission expects the Exchange to track the start (and end) date of each free service.

[28] *See* Notice, *supra* note 3, at 56722.

[29] *See* Securities Exchange Act Release No. 78586 (August 16, 2016), 81 FR 56720 (August 22, 2016) (SR–NYSEMKT–2016–62) and Securities Exchange Act Release No. 79025 (October 3, 2016), 81 FR 69881 (October 7, 2016) (SR–NASDAQ–2016–106).

[30] *See* Securities Exchange Act Release No. 79056 (October 6, 2016), 81 FR 70449 (October 12, 2016) (approving NYSEMKT–2016–62).

[31] 15 U.S.C. 78f(b)(8).

[32] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Brent J. Fields,

Secretary.

[FR Doc. 2016–26490 Filed 11–1–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14921 and #14922]

South Carolina Disaster Number SC–00040

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4286–DR), dated 10/14/2016.

Incident: Hurricane Matthew.

Incident Period: 10/04/2016 and continuing.

Effective Date: 10/25/2016.

Physical Loan Application Deadline Date: 12/13/2016.

EIDL Loan Application Deadline Date: 07/12/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of South Carolina, dated 10/14/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Berkeley, Charleston, Chesterfield

Contiguous Counties: (Economic Injury Loans Only):

South Carolina: Lancaster

North Carolina: Union

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–26393 Filed 11–1–16; 8:45 am]

BILLING CODE 8025–01–P

[33] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14911 and #14912]

North Carolina Disaster Number NC–00081

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 8.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA—4285—DR), dated 10/10/2016.

Incident: Hurricane Matthew.

Incident Period: 10/04/2016 and continuing.

Effective Date: 10/24/2016.

Physical Loan Application Deadline Date: 12/09/2016.

EIDL Loan Application Deadline Date: 07/10/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of North Carolina, dated 10/10/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Lee, Moore, Wake.

Contiguous Counties: (Economic Injury Loans Only): North Carolina: Durham, Granville, Montgomery, Randolph.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–26395 Filed 11–1–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14925 and #14926]

Florida Disaster Number FL–00121

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–4283–DR), dated 10/17/2016.

Incident: Hurricane Matthew.

Incident Period: 10/03/2016 and continuing.

Effective Date: 10/24/2016.

Physical Loan Application Deadline Date: 12/16/2016.

EIDL Loan Application Deadline Date: 07/17/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Florida, dated 10/17/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Duval

Contiguous Counties: (Economic Injury Loans Only):

Florida: Baker, Nassau

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–26394 Filed 11–1–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14923 and #14924]

Georgia Disaster Number GA–00081

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA—4284—DR), dated 10/17/2016.

Incident: Hurricane Matthew.

Incident Period: 10/04/2016 through 10/15/2016.

EFFECTIVE DATE: 10/24/2016.

Physical Loan Application Deadline Date: 12/16/2016.

EIDL Loan Application Deadline Date: 07/17/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and

Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Georgia, dated 10/17/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
Evans, Liberty, Long.

All counties contiguous to the above listed county have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–26392 Filed 11–1–16; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2016–0053]

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and one extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2016–0053].

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than December 2, 2016. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Request for Proof(s) from Custodian of Records—20 CFR 404.703, 404.704, 404.720, 404.721, 404.723, 404.725, & 404.728—0960–0766. SSA sends Form SSA–L707, Request for Proof(s) from Custodian of Records, to records custodians on behalf of individuals who need help obtaining evidence of death, marriage, or divorce in connection with claims for benefits. SSA uses the information from the SSA–L707 to determine eligibility for benefits. The respondents are records custodians including statistics and religious entities, coroners, funeral directors, attending physicians, and State agencies.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
State or Local Government	501	1	10	84
Private Sector	99	1	10	17
Totals	600			101

2. Protection and Advocacy for Beneficiaries of Social Security (PABSS)—20 CFR 435.51–435.52—0960–0768. The PABSS projects are part of Social Security's strategy to increase the number of Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) recipients who return to work and achieve financial independence and self-sufficiency as the result of receiving support, representation, advocacy, or other services. PABSS provides information and advice about obtaining vocational rehabilitation and employment services, and providing advocacy or other services a beneficiary with a disability may need to secure, maintain, or regain gainful employment. The PABSS Annual Program Performance Report collects statistical information from each of the PABSS projects in an effort to manage and capture program performance and quantitative data. Social Security uses the information to evaluate the efficacy of the program, and to ensure beneficiaries receive quality services. The project data is valuable to Social Security in its analysis of and future planning for the SSDI and SSI programs. The respondents are the 57 PABSS project sites, and recipients of SSDI and SSI programs.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
PABSS Program Grantees	57	1	60	57

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Beneficiaries	8,284	1	30	4,142
Totals	8,341			4,199

3. Methods for Conducting Personal Conferences When Waiver of Recovery of a Title II or Title XVI Overpayment Cannot Be Approved—20 CFR 404.506(e)(3), 404.506(f)(8), 416.557(c)(3), and 416.557(d)(8)—0960–0769. SSA conducts personal conferences when we cannot approve a waiver of recovery of a Title II or Title XVI overpayment. The Social Security Act (Act) and our regulatory citations require SSA to give overpaid Social Security beneficiaries and SSI recipients the right to request a waiver of recovery and automatically schedule a personal conference if we cannot approve their request for waiver of overpayment. We conduct these conferences face-to-face, via telephone, or through video teleconferences. Social Security beneficiaries and SSI recipients or their representatives may provide documents to demonstrate they are without fault in causing the overpayment and do not have the ability to repay the debt. They may submit these documents by completing Form SSA–632, Request for Waiver of Overpayment Recovery (OMB No. 0960–0037); Form SSA–795, Statement of Claimant or Other Person (OMB No. 0960–0045); or through a personal statement submitted by mail, telephone, personal contact, or other suitable method, such as fax or email. This information collection satisfies the requirements for request for waiver of recovery of an overpayment, and allows individuals to pursue further levels of administrative appeal via personal conference. Respondents are Social Security beneficiaries and SSI recipients or their representatives seeking reconsideration of an SSA waiver decision.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Title II, Personal Conference, 404.506(e)(3) and 404–506(f)(8): Submittal of documents, additional mitigating financial information, and verifications for consideration at personal conferences	19,663	1	30	9,832
Title XVI, Personal Conference, 416.557(c)(3) and 416–557(d)(8): Submittal of documents, additional mitigating financial information, and verifications at personal conferences	56,464	1	30	28,232
Totals	76,127			38,064

Dated: October 28, 2016.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2016–26453 Filed 11–1–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 9778]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on November 15, 16 and 17, 2016. Pursuant to Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. Appendix), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of trade secrets and proprietary commercial information that is privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: October 6, 2016.

Bill A. Miller,

Director of the Diplomatic, Security Service, U.S. Department of State.

[FR Doc. 2016–26485 Filed 11–1–16; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice: 9753]

Bureau of Economic and Business Affairs, U.S. Department of State Procedures for the Receipt of Written Communications Regarding Decisions That Have Been Issued by the Department of Transportation That Are Subject to Approval by the President Under 49 U.S.C. 41307

ACTION: Notice of request for comment.

SUMMARY: This notice establishes procedures for the receipt by the Department of State of written communications from private parties regarding decisions that have been issued by the Department of Transportation that are subject to approval by the President under 49 U.S.C. 41307.

DATES: This notice is effective on November 2, 2016.

ADDRESSES: All written communications are to be submitted electronically via the Federal e-Rulemaking Portal at

http://www.regulations.gov, docket number DOS–2016–0067 and must reference the Department of Transportation docket number and the title of the proceeding.

FOR FURTHER INFORMATION CONTACT: Paul A. Brown, Transportation Affairs, Bureau of Economic and Business Affairs, U.S. Department of State (Phone: (202) 647–8001 or Email: *BrownPA@state.gov*).

SUPPLEMENTARY INFORMATION: Consistent with E.O. 12597 (May 13, 1987), the Department of State is establishing updated, electronic procedures to receive and make publicly available written communications to the Department of State from private parties regarding decisions that have been issued by the Department of Transportation that are submitted for the President's approval under 49 U.S.C. 41307.

All written communications are to be submitted electronically via the Federal e-Rulemaking Portal at *http://www.regulations.gov,* docket number DOS–2016–0067 and must reference the Department of Transportation docket number and the title of the proceeding. Written communications are not private and will not be edited to remove identifying or contact information. The Department of State cautions against including any information that the entity submitting does not want publicly disclosed. The Department requests that any party soliciting or aggregating comments received from other persons for submission to the Department, inform those persons that the Department will not edit their comments to remove identifying or contact information, and that they should not include any information in their comments that they do not want publicly disclosed. If the Department receives written communications from private parties on the subject in question through other means, it will post such communications on the docket. Further, to the extent private parties communicate their views orally to Department officials, the Department will provide notice on the docket that such communication has occurred, including a summary of the views communicated. The Department does not intend to respond in writing to any communications. To the extent that it does respond in writing to any submissions, it will post the response on the docket.

Dated: October 27, 2016.

Thomas Engle,

Deputy Assistant Secretary for Transportation Affairs, Department of State.

[FR Doc. 2016–26467 Filed 11–1–16; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–106]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 14, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–9152 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Nancy Lauck Claussen, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–8166; email: *nancy.l.claussen@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 24, 2016.

Dale Bouffiou,

Deputy Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–9152.

Section(s) of 14 CFR Affected: 14 CFR 121.153(a)(2) and 121.311 (a), (b) and (j).

Description of Relief Sought: The petitioner requests relief to the extent required for an individual to use an Orthotic Positioning Device (OPD) during all phases of flight while aboard a United States-registered aircraft in an aircraft seat with an inflatable seat belt while the inflatable seat belt is deactivated. Due to physical challenges, without an exemption, this individual would be unable to fly in a way that accommodates his disability. This exemption would also provide this individual an equivalent level of safety to that of other passengers because a deactivated inflatable seat belt used as the primary method of restraint, in conjunction with the internal 5-point harness in an OPD, would provide an equivalent level of safety to that of the affected regulations regarding forward occupant excursion.

[FR Doc. 2016–26433 Filed 11–1–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–95]

Petition for Exemption; Summary of Petition Received; William Daley

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 22, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–8875 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brittany Newton (202) 267–6691, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 24, 2016.

Dale Bouffiou,

Deputy Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–8875.
Petitioner: William Daley.
Section(s) of 14 CFR Affected: § 121.436(a)(3).
Description of Relief Sought: William Daley seeks relief to allow up to 500 hours of experience gained as a military pilot in command in multi-engine, multi-crew, powered lift aircraft to count towards the experience requirements of § 121.436(a)(3).

[FR Doc. 2016–26434 Filed 11–1–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2016–0032]

Agency Information Collection Activities: Request for Comments for New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of a new information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on April 27, 2016. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by December 2, 2016.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2016–0032.

FOR FURTHER INFORMATION CONTACT: Aileen Varela-Margolles, 202–366–1701, Office of Environment, Planning and Realty, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Comment collection on the draft Traffic Noise Model's (TNM)® 3.0 Model Performance and Usability.

Background: 23 CFR 772 *Procedures for Abatement of Highway Traffic Noise and Construction Noise* Section 772.9(a) states that 'any analysis required by this subpart must use the FHWA [Federal Highway Administration] Traffic Noise Model (TNM)'. FHWA recently completed a new version of TNM®. The draft TNM® version 3.0 features a new User Interface (UI), updated acoustical information, and interoperability with the software packages for Esri's ArcGIS®, AutoDesk's AutoCAD®, and Bentley's MicroStation®. By releasing the draft TNM® version 3.0, FHWA is allowing users to provide comments and feedback on the model's functionality, its interface with the software packages and its usability for a variety of project types.

Persons who elect to provide comments on the draft TNM® version 3.0 will have to download the free TNM® software via the FHWA TNM® version 3.0 Web site at: *http://www.fhwa.dot.gov/environment/noise/traffic_noise_model/tnm_v30/.*

In order to encourage users to submit their comments and facilitate FHWA review of these comments, FHWA will set up an online portal on this Web site with standardized questions, which will automatically sort user comments into broad categories. It is this portal's questions which are the subject of this OMB ICR FR Notice.

The tool will include four standard questions. Depending on their responses participants may answer a minimum of one question or the maximum four questions. The first three questions allow the choice of one of two possible responses via drop down menus where one leads to a blank comment box with an option to add attachments, and the other response leads to another standard question for further detailed categorization. The fourth question allows selection of multiple responses via checkboxes.

The first question will sort comments into two categories—those wishing to request documentation and/or guidance, or those who would like to provide

comments or ask a question. The second question asks users what their comment or question relates to—the aesthetics or the functionality. Users who select functionality are asked a third question that will sort their comment into either the functionality of the acoustics or the functionality of the user interface (UI). If users elect the UI they will be allowed to check multiple boxes from a list of possible concerns. All responses will lead to the blank comment box with an option to add attachments totaling no more than 500 mb in size. Participation by using the model and providing comments is entirely voluntary.

Respondents: Approximately 200 participants including the 52 State DOTs, consultant/contractors, researchers, academia and other interested transportation and environmental stakeholders.

Estimated Average Burden per Response: Estimated time is approximately 15 hours per participant over the six months. Participants are each expected to spend 10 minutes per comment and to enter an average of 20 questions and/or comments each. Time expended will vary based on the number and complexity of the situations the user is modeling.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is approximately 3,667 hours over six months.

Electronic Access: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: October 27, 2016.

Michael Howell,

Information Collection Officer.

[FR Doc. 2016–26435 Filed 11–1–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA 2016–0002–N–22]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks the Office of Management and Budget's (OMB) approval of the proposed information collection activities abstracted below. However, before submitting this proposed information collection request (ICR) to OMB for clearance, FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than January 3, 2017.

ADDRESSES: Submit written comments on any or all of the information activities described in this notice by mail to either Ms. Rachel Grice, Engineering Psychologist or Michael Jones, Engineering Psychologist, Office of Railroad Policy and Development, Human Factors Division, RPD–34, FRA, 1200 New Jersey Avenue SE., Mail Stop 20, Washington, DC 20590; or Ms. Kimberly Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, FRA, 1200 New Jersey Avenue SE., Mail Stop 35, Washington, DC 20590. Commenters requesting that FRA acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB Control Number 2130–New,'' and should also include the title of the collection of information. Alternatively, comments may be faxed to (202) 493–6172 or (202) 493–6630, or emailed to *Rachel.Grice@dot.gov*, *Michael.Jones@dot.gov,* or *Kim.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Grice at (202) 493–8005, or Mr. Michael Jones at 202–493–6106 or Ms. Kimberly Toone, at (202) 493–6132. These telephone numbers are not toll-free.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, Rulemaking Procedures, require Federal agencies to provide 60 days' notice to the public for comment on information collection activities before seeking OMB approval. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), and 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways FRA can enhance the quality, utility, and clarity of the information being collected; and (4) ways FRA can minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information Federal regulations mandate, including: (1) Reducing reporting burdens; (2) organizing information collection requirements in a ''user friendly'' format to improve the use of such information; and (3) accurately assessing the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the proposed ICR that FRA will submit for OMB approval as required under the PRA:

Title: Cab Technology Integration Lab (CTIL) Head-up Display Survey.

OMB Control Number: 2130–New.

Abstract: FRA is proposing a study which will focus on railroad engineer performance. Distraction is a common problem in locomotive cabs and preliminary research suggests that the dispatch radio may have significant effects on crew workload and performance. Anecdotal evidence from four train engineers indicates that the radio is the most distracting technology in the cab. There are generally two categories of dispatcher-engineer communications. Some require immediate action and should be provided in the usual manner (over the radio). However, others do not require immediate action and could be provided as a written message.

FRA seeks to develop an understanding of how the dispatch radio communications could potentially lead to human-performance degradation in the railroad engineer, and if a Head-Up Display (HUD) would be an alternative and superior technology to communicating information usually conveyed over the dispatch radio.

HUDs have been incorporated and researched extensively in aviation and motor vehicle applications because of their relative advantage over head-down displays (HDDs). Research in the Cab Technology Integration Lab (CTIL), FRA's locomotive simulator at the Volpe Center in Cambridge, MA, has shown that in-cab displays, such as moving maps, can lead to prolonged heads-down time (Young, et al., 2015). Additionally, research done in the field in naturalistic studies using passenger vehicles has also shown that looking inside a vehicle for interface control features increases the risk of an accident (Liang, Lee, & Yekhsatyan, 2012). Thus, a HUD has real advantages over an HDD. An investigation of alternative technologies that increase forward-track viewing time is worth pursuing.

To test the hypothesis that display communications on a HUD can reduce workload and distractions while increasing the time the engineer keeps his or her eyes on the forward track, an experiment will be run in the CTIL with four different conditions: HUD presence (present or absent) will be crossed with radio communications (present or absent). Forty train engineers will participate in the simulator study and survey data collection. The HUD will be developed and installed by the Massachusetts Institute of Technology.

A subjective measure of workload, such as the NASA TLX, will be utilized in this study and provided to the train engineers after the simulator experiment. In addition, usability of the system will be rated with a usability scale by the train engineers. Analysis of the simulator data, workload data, and usability survey data will allow FRA to assess whether the HUD has a relative advantage over the HDD in rail, and if it could mitigate performance declines related to the radio communications.

Affected Public: Railroad Workers.

Respondent Universe: 40 Railroad Engineers.

Frequency of Submission: On occasion.

REPORTING BURDEN

Form No.	Respondent universe	Total annual responses	Average time per response (hours)	Total annual burden hours
Form FRA F 6180.168—Simulator Survey	40 Engineers	40 surveys	6.5	260

Total Responses: 40.

Estimated Total Annual Burden: 260 hours.

Type of Request: Approval of a new information collection.

Status: Regular Review.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that FRA may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on October 26, 2016.

Patrick Warren,

Acting Executive Director.

[FR Doc. 2016–26414 Filed 11–1–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Merchant Marine Academy Board of Visitors Meeting

AGENCY: Maritime Administration.

ACTION: Meeting notice.

SUMMARY: The U.S. Department of Transportation, Maritime Administration (MARAD) announces that the following U.S. Merchant Marine Academy (Academy) Board of Visitors (BOV) meeting will take place:

1. *Date:* November 14, 2016.

2. *Time:* TBD (est 10:00–10:30) a.m.

3. *Location:* U.S. Merchant Marine Academy, 300 Steamboat Road, Kings Point, NY; Schuyler Otis Bland Library, Crabtree Room.

4. *Purpose of the Meeting:* The purpose of this meeting is to brief BOV members on the State of the Academy and the Sea Year Stand Down.

5. *Public Access to the Meeting:* This meeting is open to the public. Seating is on a first-come basis. Members of the public wishing to attend the meeting will need to show photo identification in order to gain access to the meeting location.

FOR FURTHER INFORMATION CONTACT: The BOV's Designated Federal Officer and Point of Contact Brian Blower; 202 366–2765; *Brian.Blower@dot.gov.*

SUPPLEMENTARY INFORMATION: Any member of the public is permitted to file a written statement with the Academy BOV. Written statements should be sent to the Designated Federal Officer at: Brian Blower; 1200 New Jersey Ave. SE., W28–314, Washington, DC 20590 or via email at *Brian.Blower@Dot.gov.* (Please contact the Designated Federal Officer for information on submitting comments via fax.) Written statements must be received no later than three working days prior to the next meeting in order to provide time for member consideration. By rule, no member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the BOV.

Authority: 46 U.S.C. 51312; 5 U.S.C. app. 552b; 41 CFR parts 102–3.140 through 102–3.165.

By Order of the Maritime Administrator.

Dated: October 27, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–26391 Filed 11–1–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0067; Notice 2]

Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Michelin North America, Inc. (MNA), has determined that certain MNA tires do not fully comply with paragraph S5.5.1(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New pneumatic radial tires for light vehicles.* MNA filed a report dated May 5, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* MNA then petitioned NHTSA under 49 CFR part 556 requesting a decision that the subject noncompliance is

inconsequential as it relates to motor vehicle safety.

ADDRESSES: For further information on this decision contact Abraham Diaz, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5310, facsimile (202) 366–5930.

SUPPLEMENTARY INFORMATION:

I. Overview

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), MNA submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period on August 3, 2016 in the **Federal Register** (81 FR 51266). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web page at: *http://www.regulations.gov/.* Then follow the online search instruction to locate docket number ''NHTSA–2016–0067.''

II. Tires Involved

Affected are approximately 186 MNA Uniroyal Tiger Paw AWP II size P215/70R15 97T passenger car tires that were manufactured between January 10, 2016 and January 13, 2016.

III. Noncompliance

MNA explains that two of the digits in the tire identification number (TIN) that identify the week and year of manufacture were inadvertently switched. This resulted in the tires, which were manufactured in the second week of 2016, being molded with a manufacturing date of ''0126'' rather than the correct marking of ''0216,'' contrary to the requirements specified in paragraph S5.5.1 of FMVSS No. 139 and 49 CFR 574.5(g)(4).

IV. Rule Text

Paragraph S5.5.1 of FMVSS No. 139 requires in pertinent part:

S5.5.1 *Tire Identification Number.*

. . .

(b) *Tires manufactured on or after September 1, 2009.* Each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire.

49 CFR 574.5(g)(4) provides that the fourth grouping of symbols within the tire identification number shall ''identify the week and year of manufacture.'' The regulation specifies that ''[t]he first and second symbols of the date code must identify the week of the year,'' and ''[t]he third and fourth symbols of the date code identify the last two digits of the year of manufacture.'' Applying these requirements, the subject tires, which were manufactured during week 2 of 2016, should display ''0216'' as the date code, but instead display ''0126'' as the date code.

V. Summary of MNA's Petition

MNA believes that this noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, MNA submitted the following information and analysis of the subject noncompliance:

1. MNA stated that although the date code is not correct, it specifies a date well into the future and thus offers a unique identification for the subject tires. Furthermore, the incorrect but unique coding has been recorded in MNA's records and can be used to identify the subject tires in the event of a future market action.

2. MNA also stated that there should be no risk of duplication of the TIN in the future since the current 2 digit plant code will be replaced with a 3 digit plant code by April 25, 2025, thus creating a new TIN sequence prior to week 1 of 2026 (the date inadvertently specified on the subject tires).

3. MNA further noted that the incorrect date code does not compromise the ability to register the tire. Tire registration cards accept the date as marked (0126). Moreover, the Uniroyal tire registration Web page accepts the TIN with the date as described.

4. MNA also stated that Michelin's consumer care team has been informed should there be any questions from a consumer or dealer.

5. MNA concluded by noting that all other markings on the subject tires conform to the applicable regulations and meet all performance requirements of FMVSS No. 139.

In its part 573 Report, MNA stated that there is no imminent safety risk associated with the mismarking.

In summation, MNA believes that the described noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition, to exempt MNA from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA's Decision

NHTSA's Analysis: The agency believes that in the case of a tire labeling noncompliance, one measure of its inconsequentiality to motor vehicle safety is whether the mislabeling would affect the manufacturer's or consumer's ability to identify the mislabeled tires properly, should the tires be recalled for performance related noncompliance.

After review of MNA's petition, NHTSA believes that the mislabeling of the date code would not create confusion with manufacturers or consumers should there be a recall since MNA has taken the following measures that would enable correct tire registration: (1) Accepting registration cards for tires that have an incorrectly labeled date code, (2) accepting internet registration through their Web page for tires that have an incorrectly labeled date code, and (3) informing their consumer care team about how to address the mislabeling in response to customers' inquiries.

NHTSA's Decision: In consideration of the foregoing, NHTSA finds that MNA has met its burden of persuasion that the subject FMVSS No. 139 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, MNA's petition is hereby granted and MNA is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision on this petition only applies to the subject tires that MNA no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after MNA notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8).

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–26384 Filed 11–1–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee: Correction

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting: Correction.

SUMMARY: In the **Federal Register** notice that was originally published on October 11, 2016 (Volume 81, Number 196, Page 70277) the date will be changed from Wednesday, November 23, 2016 to Wednesday, November 16, 2016.

DATES: The meeting will be held Wednesday, November 16, 2016.

FOR FURTHER INFORMATION CONTACT: Theresa Singleton at 1–888–912–1227 or 202–317–3329.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Wednesday, November 16, 2016, at 12:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Theresa Singleton. For more information please contact: Theresa Singleton at 1–888–912–1227 or 202–317–3329, TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.* The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: October 25, 2016.

Antoinette Ross,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016–26383 Filed 11–1–16; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of official public release of the Commission's 2016 Annual Report to Congress on November 16, 2016, Washington, DC.

SUMMARY: Notice is hereby given of the following public hearing of the U.S.-China Economic and Security Review Commission.

Name: Dennis C. Shea, Chairman of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold an official public release of the Commission's 2016 Annual Report to Congress on November 16, 2016.

Purpose of Meeting

Pursuant to this mandate, the Commission will hold an official public conference in Washington, DC to release the 2016 Annual Report on November 16, 2016.

The Commission is subject to the Federal Advisory Committee Act (FACA) with the enactment of the Science, State, Justice, Commerce and Related Agencies Appropriations Act, 2006 that was signed into law on November 22, 2005 (Pub. L. 109–108). In accord with FACA, meetings of the Commission to make decisions concerning the substance and recommendations of its 2016 Annual Report to Congress are open to the public.

Topics Addressed

The Commission's 2016 Annual Report contains the following chapters and sections:

Executive Summary
Introduction
Chapter 1 : U.S.-China Economic and Trade Relations
- Section 1: Year in Review: Economics and Trade
- Section 2: State-Owned Enterprises, Overcapacity, and China's Market Economy Status
- Section 3: 13th Five-Year Plan

Chapter 2: U.S.-China Security Relations
- Section 1: Year in Review: Security and Foreign Affairs
- Section 2: China's Force Projection and Expeditionary Capabilities
- Section 3: China's Intelligence Services and Espionage Threats to the United States

Chapter 3: China and the World
- Section 1: China and South Asia
- Section 2: China and Taiwan
- Section 3: China and Hong Kong
- Section 4: China and North Korea

Chapter 4: China and the U.S. Rebalance to Asia

Location, Date and Time

Hart Senate Office Building, Room 902. Wednesday, November 16, 2016, Time TBA. Please check our Web site, *www.uscc.gov,* for possible changes to the public meeting location and time. *Reservations are not required to attend the hearing.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Leslie Tisdale, 444 North Capitol Street NW., Suite 602, Washington, DC 20001; phone: 202–624–1496, or via email at *LTisdale@uscc.gov. Reservations are not required to attend the hearing.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: October 28, 2016.

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2016–26463 Filed 11–1–16; 8:45 am]

BILLING CODE 1137–00–P

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 212 November 2, 2016

Part II

Federal Election Commission

11 CFR Parts 1, 2, 4, et al.
Technological Modernization; Proposed Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 1, 2, 4, 5, 6, 7, 100, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 114, 116, 200, 201, 300, 9002, 9003, 9004, 9007, 9032, 9033, 9034, 9035, 9036, 9038, and 9039

[Notice 2016–12]

Technological Modernization

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comment on proposed changes to its regulations to address contributions and expenditures that are made by electronic means, such as through internet-based payment processors or text messaging; to eliminate and update references to outdated technologies; and to address similar issues. The Commission has not made any final decisions about the issues and proposals presented in this rulemaking.

DATES: Comments must be received on or before December 2, 2016. The Commission will determine at a later date whether to hold a public hearing on this proposed rule. Anyone wishing to testify at such a hearing must file timely written comments and must include in the written comments a request to testify. If a hearing is to be held, the Commission will publish a document in the **Federal Register** announcing the date and time of the hearing.

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's Web site at *http://www.fec.gov/fosers,* reference REG 2013–01, or by email to *techmod@fec.gov.* Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn.: Neven F. Stipanovic, Acting Assistant General Counsel, 999 E Street NW., Washington, DC 20463. Each commenter must provide, at a minimum, his or her first name, last name, city, state, and zip code. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's Web site and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Mr. Neven F. Stipanovic, Acting Assistant General Counsel, or Ms. Jessica Selinkoff, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission is proposing to revise its regulations at 11 CFR chapter I to address electronic transactions, such as contributions made using credit cards, by text messages, or through internet-based payment processors. The Commission is also proposing regulatory revisions to facilitate electronic accounting, recordkeeping, reporting, and redesignation by political committees. Additionally, as a retrospective assessment of Commission regulations,[1] the proposed revisions would eliminate or update references to outmoded technologies and would enable interested parties to communicate electronically with the Commission for certain purposes.

A. Rulemaking History

On May 2, 2013, the Commission published in the **Federal Register** an Advance Notice of Proposed Rulemaking (''ANPRM'').[2] In the ANPRM, the Commission solicited comment on topics such as whether and how it should revise its regulations to reflect technological advances, whether industry standards in processing electronic transactions would be relevant to any such revisions, and how political committees and other persons engage in electronic transactions and recordkeeping.

The Commission received three substantive comments in response to the ANPRM.[3] Two commenters stated that the Commission should update its regulations by replacing technology-specific references with broader criteria that are less likely to grow stale as technology develops. One commenter suggested that the Commission could continue its current practice of using advisory opinions to address specific technologies. The commenters also provided comments regarding specific regulations, as discussed in more detail below.

After reviewing these comments and engaging in additional deliberation, the Commission is now proposing the changes described in this document. The Commission seeks comment on these proposals.

B. The Growing Use of Electronic Transactions, Records, and Communications

Electronic financial transactions are commonplace. According to the most recent triennial study conducted by the Federal Reserve System, ''payments have become increasingly card-based,'' ''fewer checks enter the banking system as paper at all,'' and the ''number of noncash payments in the United States increased at a compound annual rate . . . of 4.4 percent'' from 2009 to 2012.[4] Payments using prepaid cards increased at the fastest rate (15.8%) among payment types between 2009 and 2012.[5] In 2009, electronic payments—whether made by card (such as debit, credit, or prepaid) or through automated clearinghouses—''collectively exceed[ed] three-quarters of all noncash payments'' in the United States.[6] And electronic financial transactions are occurring not only through desktop computers or credit card networks, but from consumers' smartphones as well. A 2015 study of smartphone use showed that 64% of American adults own smartphones and that 57% of these people had used their smartphones in the past year for online banking.[7]

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[1] *See generally,* Jeffrey S. Lubbers, *A Guide to Federal Agency Rulemaking* 355–361 (5th ed. 2012) (summarizing ''lookback'' efforts designed to update or remove outdated or ineffective regulations); Adoption of Recommendations, 79 FR 75114, 75114–17 (Dec. 17, 2014) (Administrative Conference of the United States framework for agencies' retrospective reviews of their regulations); Special Committee to Review the Government in the Sunshine Act, 60 FR 43108, 43109–10 (Aug. 18, 1995) (recognizing agencies' ''need to review regulations already adopted to ensure that they remain current, effective and appropriate'').

[2] Technological Modernization, 78 FR 25635 (May 2, 2013).

[3] The Internal Revenue Service also submitted comments indicating that it sees no conflict between this rulemaking and the Internal Revenue Code or Treasury regulations. *See* 52 U.S.C. 30111(f).

[4] Fed. Reserve Sys., *2013 Federal Reserve Payments Study: Recent and Long-Term Payment Trends in the United States: 2003–2012,* at 6–7 (2013) (''2013 Study''), *www.frbservices.org/files/communications/pdf/research/2013_payments_study_summary.pdf.* The 2013 Study notes that ''the growth in the number of [credit, debit, and prepaid] card payments was driven by the replacement of both cash and checks.'' *Id.* at 10. Moreover, even as more checks are being processed electronically, the total number of checks paid in 2012 was ''less than half the number of checks that were paid in 2003,'' for a total of only 15% of all payments in 2012. *Id.* at 8, 12.

[5] *Id.* at 8.

[6] Fed. Reserve Sys., *2010 Federal Reserve Payments Study: Noncash Payment Trends in the United States: 2006–2009,* at 4 (2011), *www.frbservices.org/files/communications/pdf/press/2010_payments_study.pdf* (showing similar trends from 2006–2009).

[7] Pew Research Ctr., *U.S. Smartphone Use in 2015,* at 2, 5 (2015), *available at*

Among 18–29 year old smartphone owners, about 70% had used smartphones in the past year for online banking.[8]

Consistent with general payment trends, people are increasingly using cards and electronic methods to contribute to political committees. A series of studies by the Pew Research Center of the internet and elections from 2006 to 2012 shows that online political contributions have become more common since 2008 (although most contributions are still made in person, over the phone, or by mail).[9] Among adults who donated to presidential candidates in the 2012 election, 50% donated ''online or via email.'' [10] As of September 2012—only a few months after the Commission had approved the use of text messaging to make contributions—10% of those who made contributions to presidential candidates did so by ''text message from their cell phone or using a cell phone app.'' [11]

Coinciding with the increased use of electronic payments is the regular use of electronic records, including transactional records, and electronic communications. A Government Accounting Office report on the U.S. Postal Service in 2013 found that the postal service faces significant decreases in mail volume—the volume of first-class mail has declined 33 percent since 2001 and the volume of standard mail (primarily advertising) has declined 23 percent since 2007—''as online communication and e-commerce expand.'' [12] The report noted that ''many businesses and consumers have moved to electronic payments over the past decade in lieu of using the mail to pay bills,'' with fewer than 50% of all bills paid by paper mail in 2010.[13]

The public is moving from paper to electronic methods in terms of obtaining government information as well. A 2015 study showed that 40% of smartphone owners had looked up government services or information from their phones in the past year.[14] At the same time, the federal government has also been transitioning to electronic records management. A 2011 Presidential Memorandum directed towards records management reform noted that ''[d]ecades of technological advances have transformed agency operations, creating challenges and opportunities for agency records management. Greater reliance on electronic communication and systems has radically increased the volume and diversity of information that agencies must manage.'' [15] Indeed, a bipartisan congressional group noted in 2014 that the ''acceptance of electronic documents has become a cornerstone of internet commerce and is vital to our country's economy'' and urged federal government adoption of tools, such as electronic signatures, which ''have reduced paper burdens for consumers and streamlined business operations throughout the United States, providing remarkable consumer gains in terms of convenience, ease of use, transaction speed and reduced costs.'' [16]

In recent years, the Commission has recognized this trend towards electronic records and communication by establishing nonregulatory procedures for the public to electronically submit Freedom of Information Act (''FOIA'') requests, comments on rulemakings, and comments on draft advisory opinions.[17]

The statutes that the Commission is charged with implementing—the Presidential Election Campaign Fund Act, 26 U.S.C. 9001–13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031–42 (collectively, the ''Funding Acts''), and the Federal Election Campaign Act, 52 U.S.C. 30101–46 (''FECA'')—largely predate this technological evolution, as do many of the Commission's regulations. For example, these statutes and regulations generally contemplate contributions and disbursements being made only by cash, check, or ''draft,'' without taking into account electronic transactions, records, or communications. Thus, to implement FECA and the Funding Acts in a manner that accounts for the increased use of and reliance on newer technologies, the Commission is considering updates to its regulations, as described below.

C. Proposed General Definitions

Many of the Commission's current regulations do not account for technological developments in the creation, maintenance, and submission of electronic documentation, particularly in the context of electronic transactions. The Commission therefore proposes to revise its regulations to encompass electronic documents and transactions. Specifically, the Commission proposes to add new general definitions to 11 CFR part 100—for the terms ''record,'' ''written, writing, and a writing,'' and ''signature and signed''—and to revise the existing definition of ''file, filed, and filing'' at 11 CFR 100.19. The Commission intends each of these definitions to apply to all regulations implementing FECA and the Funding Acts in 11 CFR chapter 1, subchapters A–F (parts 100 through 300 and 9000 through 9042).[18]

www.pewinternet.org/files/2015/03/PI_Smartphones_0401151.pdf.

[8] *Id.* at 5–6.

[9] Aaron Smith, Pew Research Ctr. Internet and Am. Life Project, *Civic Engagement in the Digital Age* 24 (2013), *www.pewinternet.org/files/old-media//Files/Reports/2013/PIP_CivicEngagementintheDigitalAge.pdf* (finding that, of 16% of Americans who had made political contribution in 2012, 23% had done so only over internet, while 60% had done so only offline); *see also* Aaron Smith, Pew Research Ctr. Internet and Am. Life Project, *The Internet and Campaign 2010,* at 21 (2011), *www.pewinternet.org/~/media//Files/Reports/2011/Internet%20and%20Campaign%202010.pdf* (finding that online contributions increased from three percent in 2006 mid-term elections to four percent in 2010); Aaron Smith, Pew Internet and Am. Life Project, *The Internet's Role in Campaign 2008,* at 38–39 (2009), *www.pewinternet.org/~/media//Files/Reports/2009/The_Internets_Role_in_Campaign_2008.pdf* (showing that nine percent made online contributions).

[10] Aaron Smith & Maeve Duggan, Pew Research Ctr. Internet and Am. Life Project, *Presidential Campaign Donations in the Digital Age* 2 (2012), *www.pewinternet.org/~/media/Files/Reports/2012/PIP_State_of_the_2012_race_donations.pdf* (finding that 67% contributed in person, over telephone, or through mail); *see also* Republican Nat'l Comm., *Growth & Opportunity Project* 58 (2013), *http://goproject.gop.com/rnc_growth_opportunity_book_2013.pdf* (noting that, in 2012, ''email raised more than twice the percentage of total funds it raised in 2008'').

[11] Smith & Duggan, *supra* note 10, at 2.

[12] *See* U.S. Gov't Accountability Office, GAO–13–562T, *U.S. Postal Service: Urgent Action Needed to Achieve Financial Sustainability* 2–3 (2013), *www.gao.gov/assets/660/653841.pdf. But see* Lisa Rein, *Federal Government Still Depends Heavily on Snail Mail,* Wash. Post, June 5, 2011, *www.washingtonpost.com/politics/federal-government-still-depends-heavily-on-snail-mail/2011/06/05/AGIA8hJH_story.html* (describing increase in government use of first-class mail); Republican Nat'l Comm., *Growth & Opportunity Project* 59 (2013) (noting continuing relevance of direct mail in political fundraising as it ''raised twice as much as the web'' for Republican Party in 2012 presidential election).

[13] *See* U.S. Gov't Accountability Office, *supra* note 12, at 3 (attributing decrease in paper mail to increase in ''competition from electronic alternatives'').

[14] Pew Research Ctr., *U.S. Smartphone Use in 2015,* at 5 (2015), *www.pewinternet.org/files/2015/03/PI_Smartphones_0401151.pdf.*

[15] Presidential Memorandum, Managing Government Records, 76 FR 75423, 75423 (Dec. 1, 2011); *see also* Office of Mgmt. & Budget & Nat'l Archives and Records Admin., M–12–18, *Managing Government Records Directive* (2012), www.*whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-18.pdf* (setting goals and steps for federal agencies to eliminate paper and use electronic recordkeeping).

[16] Julian Hattem, *Lawmakers Want More E-signatures,* The Hill, July 14, 2014, *http://www.thehill.com/policy/technology/212170-lawmakers-want-more-e-signatures.*

[17] *See, e.g.,* FEC, Freedom of Information Act, *www.fec.gov/press/foia.shtml#search=FOIA* (last visited Oct. 5, 2016); FEC, Procedures Regarding Draft Advisory Opinions, *www.fec.gov/law/draftaos.shtml* (last visited Oct. 5, 2016); FEC, Submit Comments on Ongoing Rulemakings, *sers.fec.gov/fosers* (last visited Oct. 4, 2016).

[18] *See* 11 CFR 9001.1 (applying definitions in part 100 to public finance regulations unless expressly stated otherwise), 9031.1 (same). The proposed part 100 definitions would not apply to the

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These new and revised definitions are designed to be broad enough to encompass both traditional (paper) and electronic documents and flexible enough to remain relevant as new forms of electronic documentation emerge in the future.

1. New Definition of ''Record''—Proposed 11 CFR 100.34

FECA requires each political committee to ''keep an account of'' its contributions and disbursements and to maintain and preserve certain records.[19] The Funding Acts similarly require that certain records be kept, and furnished to the Commission on request.[20] The Commission's regulations implementing these requirements refer to ''record(s)'' almost 150 times, but few such references that include definitions or specific examples refer to electronic documentation.[21] The Commission has therefore received numerous requests for guidance regarding how its recordkeeping provisions apply to electronic records.[22]

The Commission now proposes to add a general definition of ''record'' at 11 CFR 100.34 that would expressly include both paper and electronic records. Proposed 11 CFR 100.34 has two components.

First, § 100.34(a) would define ''record'' broadly, as ''information that is inscribed on a tangible medium or that is stored in an electronic or other medium from which the information can be retrieved and reviewed in visual or aural form.'' The definition draws on several sources that describe a variety of paper and electronic records. These sources include Black's Law Dictionary,[23] the Federal Rules of Evidence,[24] Federal Rules of Civil Procedure,[25] the Electronic Signatures in Global and National Commerce Act (also known as the E-Sign Act),[26] and the Uniform Electronic Transactions Act (''UETA'').[27] The proposed definition uses the term ''information'' (as do the Black's Law Dictionary, E-Sign Act, and UETA definitions of ''record'') rather than more specific examples of the forms in which information may be presented (such as memoranda, reports, and other examples used in the Federal Rules of Evidence and Federal Rules of Civil Procedure definitions of ''record''). By proposing to use this broader term, the Commission intends the definition to be flexible enough to encompass any new forms of memorializing information that may arise as new documentation technologies emerge.

Similarly, the Commission intends the definition of ''record'' to be flexible with respect to the media in which information may be memorialized. Thus, the Commission proposes to include in the definition information that is ''inscribed on a tangible medium'' or ''stored in an electronic or other medium.'' Similar language is used in the Black's Law Dictionary, E-Sign Act, UETA, and Federal Rules of Civil Procedure definitions of ''record.'' By including information stored in electronic ''or other'' media, the Commission intends the definition of ''record'' to be broad and flexible enough to address any new forms of media on which information may be stored as technology develops.

The Commission proposes to require any information stored on ''electronic or other'' (non-tangible) media to be retrievable and reviewable in visual or aural form. Most of the source definitions noted above similarly require information to be both retrievable and perceivable. The Commission proposes to require information to be retrievable in ''visual or aural'' form so that the Commission can review the record and, when appropriate, make it available to the public. In essence, therefore, the Commission intends the definition to enable any person to comply with the Commission's recordkeeping regulations through the use of tangible or intangible media, so long as the information stored in such records can be retrieved and reviewed.

The Commission seeks comment on the proposed definition of ''record.'' Is it too narrow or too broad? Would the proposed definition benefit from providing specific examples of ''records''? If so, what examples should the Commission add?

Second, proposed 11 CFR 100.34(b) requires any person who provides an electronic (or otherwise non-tangible) record to the Commission to provide the equipment and software needed to retrieve and review the information in the record, upon request by, and at no cost to, the Commission. The proposed regulation specifies that the Commission may request such equipment and software when the Commission is unable to review the record using the Commission's existing equipment and software. A comparable requirement currently appears in 11 CFR 102.9(a)(4)(ii) for political committees that maintain digital images of checks or written instruments for contributions exceeding $50 and in 11 CFR 9036.2(b)(1)(vi) for publicly funded candidates submitting certain digital images. If the Commission adopts proposed § 100.34(b), it would remove

administrative regulations in parts 1–8 (such as those implementing the Privacy Act or FOIA), which generally have their own definition sections because they implement different statutes than the regulations in the remainder of 11 CFR chapter 1.

[19] *See* 52 U.S.C. 30102(c), (d), (h)(2), (i); *see also* 52 U.S.C. 30104(i)(8)(A)(ii) (including in definition of ''bundled contribution'' contributions received and credited through ''records,'' among other methods).

[20] *See* 26 U.S.C. 9003(a)(2), 9012(d)(1)(B), 9033(a)(2), 9042(c)(1)(B); *see also* 26 U.S.C. 9009(b) (authorizing Commission to require keeping and submission of records), 9039(b) (same).

[21] *See, e.g.,* 11 CFR 102.9(b)(2) (requiring records such as canceled checks, receipts, and carbon copies for disbursements over $200), 102.9(d) (addressing best efforts to obtain ''receipts, invoices, and cancelled checks''); *but see* 11 CFR 102.9(a)(4) (requiring photocopy of each check or written instrument or digital image of each check or written instrument), 104.22(a)(6)(ii)(A) (defining ''record'' for lobbyist bundling purposes to include electronic records).

[22] *See, e.g.,* Advisory Opinion 1995–09 (NewtWatch PAC) (approving proposal to maintain records supporting electronic fund transfers); Advisory Opinion 1993–04 (Christopher Cox Congressional Committee); Advisory Opinion 1994–40 (Alliance for American Leadership); *see also* FEC, *Campaign Guide: Congressional Candidates and Committees* 76 (2014), *www.fec.gov/pdf/candgui.pdf* (describing recordkeeping for credit card disbursements).

[23] *See Record,* Black's Law Dictionary (10th ed. 2014) (''record'' is ''[i]nformation that is inscribed on a tangible medium or that, having been stored in an electronic or other medium, is retrievable in perceivable form'' (citing UCC 1–201(b)(31)).

[24] *See* Fed. R. Evid. 101(b)(4) (''record'' includes ''a memorandum, report, or data compilation''), 1001(b) (''' 'recording' consists of letters, words, numbers, or their equivalent recorded in any manner''), 1001(d) (''original'' recording is ''recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, 'original' means any printout — or other output readable by sight — if it accurately reflects the information.'').

[25] *See* Fed. R. Civ. P. 34(a)(1)(A) (party may serve discovery of ''any designated documents or electronically stored information—including writings, drawings, graphics, charts, photographs, sound recordings, images, and other data or data compilation—stored in any medium from which information can be obtained directly or, if necessary, after translation by the responding party into a reasonably usable form'').

[26] *See* 15 U.S.C. 7006(9) (''record'' is ''information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form''), 7006(4) (''electronic record'' is record ''created, generated, sent, communicated, received, or stored by electronic means'').

[27] *See* Unif. Elec. Transactions Act 2(7) (Nat'l Conference of Comm'rs on Unif. State Laws 1999), *www.uniformlaws.org/shared/docs/electronic%20transactions/ueta_final_99.pdf* (''electronic record'' is ''record created, generated, sent, communicated, received, or stored by electronic means''), 2(13) (''record'' is ''information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form''); *see also id.* at 2(5) (''' 'Electronic' means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities''). The UETA is a model law developed by the National Conference of Commissioners on Uniform State Laws. It has been adopted in 47 states and the District of Columbia.

the separate requirements in 11 CFR 102.9(a)(4)(ii) and 9036.2(b)(1)(vi).[28]

In conjunction with the proposed definition, the Commission proposes to make conforming amendments to a number of regulations.

First, the Commission proposes to make conforming changes by replacing references to ''copy,'' ''journal,'' ''document,'' or ''documentation'' with references to ''record'' in the following provisions: 11 CFR 100.82(e)(1)(i) (recordkeeping for bank loans), 100.82(e)(2)(ii) (same), 100.93(j)(1) through (3) (recordkeeping requirement for travel by aircraft and other conveyances), 100.142(e)(1)(i) (recordkeeping for bank loans), 100.142(e)(2)(ii) (same), 102.9(b)(2)(i)(B) and (b)(2)(ii) (recordkeeping for disbursements), 102.9(f) (recordkeeping requirements for designations, redesignations, attributions, and dates of contributions), 102.11 (written journal of disbursements from petty cash funds), 104.10(a)(4) (recordkeeping requirement in support of allocation), 104.10(b)(5) (same), 104.14(b)(4)(iv) and (v) (recordkeeping requirement for loan repayments), 104.17(a)(4) (recordkeeping requirement in support of allocation), 104.17(b)(4) (same), 106.2(a)(1) (same), 106.2(b)(2)(ii) (same), 106.2(b)(2)(v) (same), 110.1(l)(1) (recordkeeping for designations of contributions), 110.1(l)(4)(i) (recordkeeping for date contribution made, redesignation, and reattribution), 110.1(l)(6) (same), 111.4(d)(4) (enforcement complaints), 111.12(a) and (b) (subpoenas *duces tecum* in the enforcement process),[29] 111.15(c) (agreements regarding production of documents), 111.35(e) (submissions challenging administrative fines), 111.36(b) through (e) (same), 114.8(d)(2) and (3) (trade association solicitation approvals), 9003.1(b)(2) through (5) (conditions for public funding eligibility), 9003.5 (recordkeeping for disbursements), 9003.5(b), (b)(1)(ii)(A) and (B), (b)(1)(iii) and (iv), (b)(4), and (c) (same), 9003.6(c) (production of computer information), 9004.7(b)(5)(iv) and (v) (recordkeeping for payments for accommodations and travel), 9004.9(d)(1)(i) and (e) (determining assets of publicly funded committees), 9007.1(b)(1)(iv) and (c)(2) (audits of publicly funded committees), 9033.1(b)(2) through (6) (conditions for public funding eligibility), 9033.2(c) (matching fund submissions), 9033.11 (recordkeeping for disbursements), 9033.11(b), (b)(1)(ii)(A) and (B), (b)(1)(iii) and (iv), (b)(4), and (c) (same), 9033.12(c) (production of computer information), 9034.2(c)(1)(iii) (recordkeeping for attribution of contributions), 9034.5(c)(1) and (d) (reporting debts), 9034.7(b)(5)(iv) and (v) (same), 9034.8(b)(4) (joint fundraising recordkeeping), 9035.1(c)(3) (publicly funded committee expenditure limitation compliance), 9036.1(b)(3), (4), and (7) (matching fund submissions), 9036.2(b)(1)(vi) and (vii) (same), 9036.3(b), (b)(4), and (d) (same), 9036.4(b)(4) (same), 9036.5(c)(1) (matching fund resubmissions), 9038.1(b)(1)(iv) and (c)(2) (audits of publicly funded committees), 9038.2(b)(3) (matching fund repayments), 9039.2(a)(3) and (b) (continuing review of publicly funded committees), and 9039.3(b)(2)(vi) (subpoenas). The Commission proposes to refer to the defined term ''record'' in these provisions to increase consistency in the regulatory terminology. Moreover, by changing these provisions' references from ''copy,'' ''document,'' and ''journal'' to ''record,'' the Commission intends to avoid the implication that these provisions are intended to refer only to paper materials or to mean something other than what is meant by ''record.'' The Commission seeks comment on whether these proposed conforming amendments will enhance the clarity of the amended regulations. In addition, are there other Commission regulations that should be revised to incorporate the defined term ''record'' in lieu of another term? [30]

Second, the Commission proposes to replace the regulatory requirements that a committee receiving a check or other written instrument designated for a specific election must retain ''a full-size photocopy of the check or written instrument.'' 11 CFR 110.1(l)(1) and (l)(4)(ii); *see also* 11 CFR 9036.1(b)(5) and (6) (referring to records that include ''full-size photocopy'' of contribution checks). Recognizing that such records may reasonably be retained in forms other than ''a full-size photocopy,'' the Commission proposes to amend 11 CFR 110.1(l)(1) and (l)(4)(ii) and 9036.1(b)(5) and (6) to require maintenance or submission, as appropriate, of a ''record'' that contains a complete image of that instrument. Are there other Commission regulations that similarly incorporate unnecessarily narrow record formats and should be expanded to include electronic records?

The Commission does not propose to revise the references to ''full-size photocopies'' in 11 CFR 9036.1(b)(3) because that section already provides two procedures for submission of records: one for paper records and another for digital records. The Commission welcomes comment on whether it should simplify § 9036.1(b)(3) to provide only one procedure applicable to all records.

Finally, the Commission proposes to make conforming revisions to two provisions that describe the administrative record in public finance matters. The Commission proposes to add ''records'' to the lists of materials that comprise the administrative record for final determinations in §§ 9007.7(a) and 9038.7(a).

What additional conforming amendments should the Commission make in conjunction with the proposed definition of ''record''? For example, the Commission defines ''records'' for purposes of the lobbyist bundling rule in 11 CFR 104.22(a)(6)(ii)(A) as ''written evidence (including writings, charts, computer files, tables, spreadsheets, databases, or other data or data compilations stored in any medium from which information can be obtained) that the reporting committee or candidate involved attributes to a lobbyist/registrant.'' Should the Commission amend this or other provisions in light of the proposed definition of ''record''?

2. New Definitions of ''Writing'' and ''Written''—Proposed 11 CFR 100.35

FECA requires certain reports, statements, and other materials to be ''written'' or ''in writing.'' [31] The

[28] The Commission does not propose to remove or amend general requirements in the Funding Act regulations that political committees and other persons provide documentation (including user guides, technical manuals, formats, and layouts) and personnel, as necessary, to explain the capabilities of software produced to the Commission. *See, e.g.,* 11 CFR 9003.1(b)(4), 9003.6(c), 9033.1(b)(5), 9033.12(c). These more extensive requirements remain necessary in the context of the mandatory audits of committees that receive public funds.

[29] The proposed revisions to 11 CFR 111.12(a) and 111.15(c) would render these provisions consistent with the equivalent provisions of the Federal Rules of Civil Procedure, which were amended in 2006 to explicitly include ''electronically stored information'' within the scope of material subject to document requests and subpoenas. *See* Fed. R. Civ. P. 34(a)(1)(A), 45(a)(1)(A)(iii).

[30] The Commission is also proposing to replace the term ''document'' in certain regulations with ''writing,'' as discussed below. The Commission is not proposing to revise the terms ''copy,'' ''documentation,'' and ''document'' when they are used as terms of art or as verbs or when they intentionally refer to paper. *See, e.g.,* 11 CFR 100.134(e)(1)–(3) (''organizational documents'' of membership organizations), 102.9(b)(2) (specifying how disbursements ''shall be documented''), 4.1(j) (including ''paper copy'' in definition of ''duplication'' under FOIA).

[31] *See, e.g.,* 52 U.S.C. 30101(8)(B)(vii)(II) (instrument for loans), 30101(9)(A)(ii) (contract to make expenditure), 30102(e)(1) (designation of committee), 30103(d)(1) (termination statement), 30104(a)(6)(A) (48-hour notice), 30108(a) (advisory

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Funding Acts have similar ''writing'' and ''written'' requirements.[32] In the Commission's regulations, the terms ''written'' and ''writing'' (or forms of these words) appear more than 200 times, usually without definition or example.[33] The Commission has, however, interpreted at least one of these regulations to encompass certain categories of electronic documents.[34]

To clarify that ''written'' material or material ''in writing'' can be either tangible or electronic, the Commission is proposing to add a new general definition at 11 CFR 100.35.[35] The proposed definition would essentially replicate Rule 1001(a) of the Federal Rules of Evidence by defining the terms ''written,'' ''in writing,'' and ''a writing'' to mean ''consisting of letters, words, numbers, or their equivalent set down in any medium or form, including paper, email or other electronic message, computer file, or digital storage device.'' [36] In this proposed definition, the Commission intends ''writing'' and ''written'' to be broad enough to encompass not only letters and words, but also their equivalent—such as images or graphics (*e.g.,* emojis) used in lieu of text—that may arise as new forms of electronic writing emerge in the future.[37] As in the definition of ''record,'' the Commission proposes that ''writing'' may be set down in any medium or form, including electronic. The examples in the proposed definition are drawn from examples in the Black's Law Dictionary definition of ''writing'' and include those media that the Commission believes are most likely to be used by political committees. However, the examples are intended to be illustrative and not an exhaustive list.

The Commission seeks comment on the proposed definition. Is the definition broad enough to encompass writings in various media, while also specific enough to provide meaningful guidance? Is any part of the definition unnecessary or potentially problematic? Are the examples of ''medi[a] and form[s]'' helpful? Would the proposed definition benefit from different or additional examples? Should the Commission specifically require that a writing be reviewable [38] and/or reproducible,[39] or would that requirement be adequately encompassed by the proposed definition of ''record,'' as discussed above?

In conjunction with the proposed definition, the Commission proposes to make conforming changes to a number of regulations, as described below.

First, the Commission proposes to amend three regulations that refer to ''electronic mail'' as a ''written method'' of notification by which a political committee may notify a contributor that the committee has redesignated or reattributed a contribution. *See* 11 CFR 110.1(b)(5)(ii)(B)(6) (notification of redesignation), 110.1(b)(5)(ii)(C)(7) (same), 110.1(k)(3)(ii)(B)(3) (notification of reattribution). These references to ''electronic mail'' will be redundant if the Commission adopts the proposed new definition of ''written.'' Furthermore, the continued inclusion of these references might cause confusion regarding whether other Commission regulations that address ''written'' material without specifically mentioning ''electronic mail'' implicitly exclude email. To avoid such redundancy and confusion, the Commission proposes to remove these three references to electronic mail.

Second, the Commission proposes to make conforming changes regarding notifications, reports, and other communications that, under existing regulations, must be made by ''letter.'' In light of the proposed broad definition of ''writing,'' and to avoid an implication that the communications described in those provisions must be on paper, the Commission proposes to replace each reference to ''letter'' with ''writing'' in the following provisions: 11 CFR 100.3(a)(3) (candidate disavowal), 110.6(c)(1)(v) (conduit reporting), 111.9(a) and (b) (Commission notification of reason to believe finding), 111.17(a) and (b) (Commission notification of probable cause finding), 111.18(d) (respondent notification of desire to negotiate conciliation), 111.37(a) and (b) (Commission notification of administrative fine determination), 111.40(a) (same), 116.8(b) (creditor notification of intent to forgive debt), 9003.1(a)(1) (candidate agreement to comply with public funding conditions), 9032.2(d) (candidate disavowal), 9033.1(b)(8) (submission of information changes by publicly funded candidates), and 9033.5(a)(2) (publicly funded candidate notice of inactivity).

Similarly, the Commission proposes to revise several references to ''letters'' or ''mailings'' by replacing them with references to the type of information contained therein, such as ''certification,'' ''report,'' ''notice,'' or ''agreement.'' For example, 11 CFR 9003.2(d) currently states: ''Major party candidates shall submit the certifications required under 11 CFR 9003.2 in a letter which shall be signed and submitted within 14 days after receiving the party's nomination for election,'' and the provision makes several additional references to ''such letter.'' The Commission proposes to revise § 9003.2(d) to read: ''Major party candidates shall sign and submit the certifications required under 11 CFR 9003.2 within 14 days after receiving the party's nomination for election,'' and to replace further references to ''such letter'' with the phrase ''such certification.'' The Commission proposes to similarly replace each reference to ''letter'' or ''mailing'' in the following provisions: 11 CFR 110.6(c)(1)(ii) (conduit reporting), 111.6(a) (response to complaint in enforcement action), 111.23(a) and (b) (respondent notification of legal representation), 114.8 (trade

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opinion requests and advisory opinions), 30109(a)(1) (enforcement complaints), 30109(a)(12)(A) (confidentiality waiver), 30118(b)(4)(B) (semiannual solicitations); *see also* 52 U.S.C. 30107(a)(1) (Commission authority to require reports), 30124(a) (fraudulent misrepresentation).

[32] *See, e.g.,* 26 U.S.C. 9002(1) (authorization of committee), 9003(a) (agreement for eligibility for payment), 9032(1) (authorization of committee), 9032(9) (person authorized to incur expense), 9033(a) (agreement for eligibility for payment), 9034(a) (written instrument as contribution); *see also* 26 U.S.C. 9009(b) (Commission's authority to require the keeping and submission of records), 9039(b) (same).

[33] *See, e.g.,* 11 CFR 102.7(c) (treasurer's authorization), 109.33(a) (assignments), 110.1(b) (redesignation of contribution), 9003.3(a)(1)(i)(C) (designations to GELAC), 9007.2(c) (disputing determinations).

[34] *See, e.g.,* Electronic Contributor Redesignations, 76 FR 16233 (Mar. 23, 2011) (noting internet-based redesignation method that Commission found to be ''in writing and be signed by the contributor'' as required by 11 CFR 110.1(b)(5) and 110.2(b)(5)).

[35] Some Commission regulations that require a document to be ''in writing'' or ''written'' also require the document to be signed. The Commission is proposing a new definition of ''signed,'' below.

[36] *See* Fed. R. Evid. 1001(a) (''writing' consists of letters, words, numbers, or their equivalent set down in any form''). The Federal Rules of Evidence separately clarify that ''a reference to any kind of written material or any other medium includes electronically stored information.'' Fed. R. Evid. 101(b)(6).

[37] *See* Elahe Izadi, *The Word of the Year Is Not Actually a Word. It's this Emoji: [heart emoji],* Wash. Post, Dec. 29, 2014, *www.washingtonpost.com/news/the-intersect/wp/2014/12/29/the-word-of-the-year-is-not-actually-a-word-its-this-emoji* (noting that 2014's annual survey resulted in graphic symbol as most frequently used English ''word'' on internet).

[38] *See Writing,* Black's Law Dictionary (10th ed. 2014) (defining ''writing'' as any ''intentional recording of words . . . that may be viewed or heard with or without mechanical aids. This includes hard-copy documents, electronic documents on computer media, audio and videotapes, emails, and any other media on which words can be recorded.'').

[39] *See* 15 U.S.C. 7001(e) (providing that if statute or regulation requires certain records to ''be in writing, the legal effect, validity, or enforceability of an electronic record of such . . . record may be denied if such electronic record is not in a form that is capable of being retained and accurately reproduced for later reference'').

association's solicitation), 116.8(b) (creditor notification of intent to forgive debt), 200.3(a)(2) (Commission solicitation of comments from Commissioner of Internal Revenue on rulemaking petition), 200.3(a)(3) (Commission notification to rulemaking petitioner), 200.4(b) (same), 201.3(b)(1) (candidate submissions under public funding rules), 201.3(b)(2)(i) (Commission notifications under public funding rules), 9003.1(a)(2) (candidate agreement to comply with public funding conditions), 9033.1(a)(1) (candidate agreement to comply with public funding conditions), and 9033.2(a)(1) (publicly funded candidate certification).

The Commission is also proposing to revise some uses of ''letter'' in regulations to which the proposed definition of ''writing'' would not apply. *See supra* note 18. Specifically, the Commission proposes the following revisions to its public disclosure and Rehabilitation Act regulations: (1) Replace ''Letter requests'' with ''Requests'' in 11 CFR 5.4(a)(5) (describing types of public disclosure records); (2) replace the reference to ''a letter containing'' certain Rehabilitation Act notifications with a requirement for the notifications to be ''in writing,'' 11 CFR 6.170(g); and (3) conform § 6.170(h) to the forgoing change by replacing that section's reference to ''the letter'' required by § 6.170(g) with ''the notification.''

Third, the Commission is proposing to replace the terms ''written document'' and ''written documentation'' with ''writing'' in 11 CFR 100.29(b)(6)(ii)(A) and 9034.2(c)(1)(i).

Finally, the Commission proposes conforming changes to account for the fact that the new general definition of ''written'' may create confusion when applied to the use of that term in 11 CFR 300.64(c)(3). Section 300.64(c)(3) provides that certain ''written'' material must satisfy the disclaimer requirements of 11 CFR 110.11(c)(2). Section 110.11, however, sets forth requirements such as font size and display type—requirements that, both on their face and under the explicit terms of the regulation, apply only to ''printed'' material.[40] *See* 11 CFR 110.11(c)(2). Thus, to avoid suggesting that the proposed new definition of ''written'' would alter the substantive application of § 300.64, the Commission proposes to conform that section to § 110.11 by replacing the word ''written'' with ''printed'' in § 300.64(c)(3)(ii) and (iii) and removing the word ''written'' from § 300.64(c)(3)(v).

The Commission seeks comment on the conforming changes proposed above.[41] Should the Commission make additional conforming amendments if it adopts the new definition?

The Commission also seeks comment on whether any existing regulatory references to ''written,'' ''in writing,'' or ''a writing'' should be excluded from the proposed new definition. For example, several Commission regulations use the term ''written instrument'' to mean a check, money order, or negotiable instrument. The Commission believes that ''written instrument'' is generally understood to be a term of art, such that it would not be affected by a new definition of ''written,'' but should the new definition of ''written'' nonetheless expressly exclude the term ''written instrument''?[42] Are there other uses of ''written'' in the Commission's regulations that should be excluded or defined separately from the proposed new general definition?

3. New Definition of ''Signature'' and ''Electronic Signature''—Proposed 11 CFR 100.36

FECA and the Funding Acts require certain documents to be signed,[43] sworn, notarized, submitted under oath, or certified under penalty of perjury.[44] In Commission regulations, the terms ''sign,'' ''signed,'' and ''signature'' (and variants thereof) appear more than 50 times. Only some of these references provide for electronic signatures,[45] although the Commission has interpreted at least one of the regulations that does not so provide to nonetheless allow certain electronic signatures.[46] Similarly, only some of the Commission regulations requiring certification under penalty of perjury provide for electronic certifications.[47]

To clarify that the regulatory signature requirements may generally be met electronically, the Commission is proposing to add a general definition of ''signature'' at 11 CFR 100.36. The proposed definition contains three paragraphs.

Proposed paragraph (a) defines ''signature'' as ''an individual's name or mark on a writing or record that identifies the individual and authenticates the writing or record.'' This definition draws on legal and other dictionary definitions of ''signature.''[48]

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[40] Most issues concerning the disclaimer requirements for electronic communications, such as the treatment of electronic materials as ''printed,'' are outside the scope of this rulemaking. They may be addressed in a separate rulemaking. *See* Internet Communication Disclaimers, 76 FR 63567 (Oct. 13, 2011); *see also infra* note 106. To review and comment on documents on that subject, visit *www.fec.gov/fosers,* reference REG 2011–02.

[41] The Commission is not proposing to make conforming changes to the regulations regarding publicly funded nominating conventions, 11 CFR part 9008, because these regulations may be the subject of a separate rulemaking. *See* Press Release, FEC Issues Interim Reporting Guidance for National Party Committee Accounts, (Feb. 13, 2015), *www.fec.gov/press/press2015/news_releases/20150213release.shtml; see also* Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235, 128 Stat. 2130, 2772 (2014) (amending FECA with respect to national party convention funding); Gabriella Miller Kids First Research Act, Public Law 113–94, 128 Stat. 1085 (2014) (amending Funding Acts with respect to national party convention funding). To review and comment on documents on that subject, visit *http://www.fec.gov/fosers,* reference REG 2014–10.

[42] *See* 11 CFR 102.9(a)(4)(i)-(ii), 104.8(d)(1), 110.1(k)(3)(ii)(B)(1), 110.1(l)(1), 110.1(l)(4)(ii), 110.6(c)(1)(v), 110.20(a)(5)(iii), 9034.2(a)(1), 9034.2(a)(4), 9034.2(b), 9034.2(c), 9034.3(c), 9034.9(c)(7)(iv), 9036.1(b)(3), 9036.2(b)(1)(vi), 9036.3(b)(1)–(3), 9036.3(c)(3), 9036.5(c)(1).

[43] *See* 52 U.S.C. 30109(a)(1) (enforcement complaints), 30109(a)(4)(B)(ii) (conciliation agreements); *see also* 52 U.S.C. 30104(a)(1) (reports), 30104(a)(11)(C) (requiring Commission to provide method other than signature for verification of electronically filed reports), 30104(d)(3) (same).

[44] *See* 52 U.S.C. 30104(b)(6)(B)(iii) (independent expenditure reports), 30104(c)(2)(B) (same), 30104(f)(2) (electioneering communication reports), 30107(a)(1) (reports and answers), 30109(a)(1) (enforcement complaints), 26 U.S.C. 9003(b)–(c) (payment eligibility), 9004(d) (personal fund expenditures); *see also* 52 U.S.C. 30104(a)(11)(C) (requiring Commission to provide method for perjury certifications for electronically filed reports), 30104(d)(3) (same).

[45] *See, e.g.,* 11 CFR 104.18(g) (providing for electronic signatures for reports), 111.4(b)(2) (complaints), 111.23(a) (designation of counsel), 300.37(d) (certifications by certain tax-exempt organizations), 9034.2(c) (allowing for alternative signatures for contributors over the internet).

[46] *See, e.g.,* Electronic Contributor Redesignations, 76 FR 16233; *see also* Advisory Opinion 2013–12 (Service Employees International Union COPE) at 3–4 (discussing Commission's history of approving ''authorizations in a form other than the traditional written signature, where the use of technology would not compromise the intent of the [FECA] or Commission regulations'').

[47] *Compare* 11 CFR 104.4(d)(2) (electronic certification under penalty of perjury for reporting), 104.18(g) (same), *and* 109.10(e)(2)(ii) (same), *with* 11 CFR 111.4(b)–(c) (notarization requirement for complaints), *and* 111.11 (sworn answers). *See also* 11 CFR 100.93(a)(3)(iv)(A) (aircraft operator certificated by Federal Aviation Administration or foreign authority), 100.93(g)(3) (certification from aircraft service provider), 102.2(a)(3) (certification by committee of multicandidate committee criteria), 104.3(b)(3)(vii)(B) (committee's certification, under penalty of perjury, in independent expenditure report), 104.3(d)(1)(v) (certification from lending institution concerning loans to political committee), 300.11(d) (signed written certification by 501(c) organization), 300.37(d) (same).

[48] *See Signature,* Black's Law Dictionary (10th ed. 2014) (defining ''signature'' as any ''name, mark, or writing used with the intention of authenticating a document'' (citing U.C.C. 1–201(37) and 3–401(b) and Restatement (Second) of Contracts 134 (1979))); *Signature,* Oxford English Dictionary Online, *www.oed.com* (subscription required) (''A person's name written (esp. in a distinctive way) so as to authenticate a document, authorize a transaction, or identify oneself as the writer or sender of a letter. Also: a distinctive mark or cross serving this purpose.'') (last visited Oct. 4, 2016); *Signature,* Random House Dictionary of the English Language,

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It also incorporates the terms ''writing'' and ''record,'' as opposed to the source dictionaries' use of the term ''document,'' to be consistent with the new definitions of those terms in proposed 11 CFR 100.34 and 100.35, discussed above. Unlike at least one source definition,[49] the definition of ''signature'' proposed here does not incorporate a subjective ''intent'' element, *i.e.,* a requirement that a signature be affixed by the signer with a certain intention; rather, the Commission proposes an objective definition with which compliance can be initially determined on the face of the signed writing or record. The Commission seeks comment on this proposed definition of ''signature.''

Proposed § 100.36(a) also provides that, unless otherwise specified, the definition of ''signature'' includes an ''electronic signature.'' Paragraph (b) of proposed 11 CFR 100.36 in turn defines an ''electronic signature'' as ''an electronic word, image, symbol, or process that an individual attaches to or associates with a writing or record to identify the individual and authenticate the writing or record.'' This definition is drawn from several sources, including Black's Law Dictionary,[50] the E-Sign Act,[51] UETA,[52] and the Commission's interpretive rule concerning electronic redesignations of contributions.[53] Proposed § 100.36(b) follows all of the source definitions of ''electronic signature'' in using the terms ''symbol'' and ''process,'' as well as in requiring that the electronic signature be attached to or associated with a writing or record. The Commission also proposes to include ''word'' and ''image'' as methods of electronic signature, based on the examples in Black's Law Dictionary, to make clear that a writing or record can be signed by these means (such as by inserting a digital image of a person's handwritten signature). And as with proposed § 100.36(a), proposed § 100.36(b) incorporates the terms ''writing'' and ''record'' to be consistent with the new definitions in proposed 11 CFR 100.34 and 100.35. The Commission thus intends the proposed definition to be flexible enough to encompass forms that electronic signatures may take as new technologies emerge.

The proposed definition intentionally differs from the source definitions in certain respects. For example, the proposed definition does not include ''sound'' as a form of electronic signature because the Commission's current and anticipated reporting technologies would not enable it to receive and make public audio signatures. Further, the Commission does not propose to distinguish between an ''electronic signature'' and a ''digital signature.'' Black's Law Dictionary defines the latter as having a heightened level of security, integrity, and authenticity compared to an electronic signature,[54] but because the Commission utilizes other methods to ensure a heightened level of authenticity when required (such as notarization requirements, as discussed below), the Commission does not believe that the proposed definition of ''signature'' should differentiate between digital and electronic signatures.

Proposed paragraph (b) lists as examples of electronic signatures ''a digital image of a handwritten signature'' and ''a secure, digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender.'' These examples are drawn from the definition of ''digital signature'' and examples of ''electronic signature'' in Black's Law Dictionary; the Commission believes them to be the forms of electronic signature most likely to be used by political committees. However, the examples are intended to be illustrative only and not an exhaustive list. Are these examples helpful? Should other examples be included in the regulation?

As noted above, the proposed regulation would provide that electronic signatures are valid signatures ''unless otherwise specified.'' This language is intended to provide the Commission with flexibility to require more specific forms of electronic signatures, or even to prohibit electronic signatures, in certain circumstances. The Commission believes that preserving such flexibility is important because, as new technologies develop, some forms of electronic signatures may arise that are unreliable or otherwise not suitable for authenticating records. Are there Commission regulations for which the Commission should now require more specific forms of electronic signature in order to safeguard the integrity and authenticity of the signature?

In light of the proposed new definition of ''signature,'' the Commission also proposes conforming changes to regulations that currently have more specific signature requirements. For example, 11 CFR 104.4(d)(2) and 109.10(e)(2)(ii) currently specify that an independent expenditure report must be verified by one of two methods: By ''handwritten signature'' on reports filed on paper, or by ''typing the treasurer's name'' on reports filed by electronic mail. The Commission proposes to revise these provisions to allow electronically filed independent expenditure reports to be verified by ''electronic signature'' (which might include, but would not be limited to, typing the treasurer's name on the reports). The Commission also proposes to revise the electronic signature requirement at 11 CFR 9034.2(c), which defines ''signature'' for matchable presidential primary election payments made by credit or debit card, and to make other changes to that section as described further below. *See infra* Section (E)(3).

Paragraph (c) of proposed 11 CFR 100.36 provides that a ''writing or record may be sworn, made under oath, or otherwise certified or verified under penalty of perjury, by electronic signature.'' This proposal tracks the corresponding provision of the E-Sign Act, which provides that a legal requirement for a signature to be ''acknowledged, verified, or made under oath'' is ''satisfied if the electronic signature of the person authorized to perform those acts . . . is attached to or logically associated with the signature or record.'' 15 U.S.C. 7001(g).[55] The

Unabridged (2nd ed. 1987) (defining ''signature'' as ''a person's name, or a mark representing it, as signed personally or by a deputy, as in subscribing a letter or other document'').

[49] *See Signature,* Black's Law Dictionary (10th ed. 2014).

[50] This dictionary defines an ''electronic signature'' as an ''electronic symbol, sound, or process that is either attached to or logically associated with a document (such as a contract or other record) and executed or adopted by a person with the intent to sign the document.'' *Electronic Signature,* Black's Law Dictionary (10th ed. 2014). The dictionary provides as examples ''a typed name at the end of an email, a digital image of a handwritten signature, and the click of an 'I accept' button on an e-commerce site.'' *Id.*

[51] *See* 15 U.S.C. 7006(5) (defining ''electronic signature'' as ''an electronic sound, symbol, or process, attached to or logically associated with a . . . record and executed or adopted by a person with the intent to sign the record'').

[52] *See* UETA 2(8) (defining ''electronic signature'' as ''an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record'').

[53] *See* Electronic Contributor Redesignations, 76 FR 16233.

[54] *See Digital Signature,* Black's Law Dictionary (10th ed. 2014) (defining ''digital signature'' as ''secure, digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender''), *Electronic Signature,* Black's Law Dictionary (10th ed. 2014) (stating that ''electronic signature does not suggest or require the use of encryption, authentication, or identification measures'').

[55] *See also* UETA sec. 11 (providing that notarization, acknowledgment, verification, or oath requirement is ''satisfied if the electronic signature of the person authorized to perform those acts . . . is attached to or logically associated with the signature or record'').

Commission seeks comment on whether this proposal provides sufficient safeguards of integrity and authenticity for material that must be sworn or otherwise verified. Should the Commission require additional safeguards? For example, in a recent interpretive rule, the Commission noted that a political committee could check a contributor's electronic authorization against existing committee records to assure ''the contributor's identity and intent comparable to that of a written signature.'' [56] Should all electronic oaths and certifications require some form of external verifiability (such as by reference to existing committee records as contemplated in the interpretive rule)? If so, how?

Finally, proposed paragraph (c) also states that ''[a] writing or record may be notarized electronically pursuant to applicable State law.'' A number of states currently allow for electronic notarization.[57] Is there any reason why the Commission should not accept documents notarized electronically pursuant to state law?

4. Revised Definition of ''File, Filed, or Filing''—Proposed 11 CFR 100.19(g)

The Commission proposes to revise the definition of ''file, filed, or filing'' at 11 CFR 100.19 so that interested parties can more easily communicate electronically with the Commission. The Commission also proposes to make conforming amendments throughout 11 CFR chapter I.

Section 100.19 currently defines ''file, filed or filing'' to include certain forms of electronic submission, but only in the context of documents that must be filed with the Commission or the Secretary of the Senate under 11 CFR parts 101, 102, 104, 105, 107, 108, and 109. As such, the current rule addresses the filing of reports and statements only regarding independent expenditures, electioneering communications, and the organization, contributions, and disbursements of political committees. But, as described in more detail below, the Commission's regulations also require or provide for the submission of numerous other documents to the Commission. Many of these current regulations regarding sending documents to the Commission specifically include the Commission's mailing address (999 E Street, NW., Washington, DC 20463).[58] As such, the regulations suggest that the submissions must be made physically (such as by mail or hand-delivery), rather than electronically.

To provide the Commission with greater flexibility to accept documents electronically, the Commission proposes to add new paragraph (g) to 11 CFR 100.19. Under new paragraph (g), a document other than those already covered by paragraphs (a) through (f) may be filed with the Commission ''in person or by mail, including priority mail or express mail, or overnight delivery service, [at the Commission's street address], or by any alternative means, including electronic, that the Commission may prescribe.'' The Commission intends to use this proposed change to adopt such procedures for receiving electronic submissions—such as through online forms [59] or email [60]—as the Commission determines to be appropriate for the various categories of affected documents.

The Commission also proposes to revise the introductory paragraph of 11 CFR 100.19 to explicitly note the scope of new paragraph (g). This proposed change is not intended to have any effect on the existing rules with respect to documents governed by paragraphs (a) through (f).

Similarly, the Commission proposes to make conforming amendments by replacing the Commission's street address in a number of regulations that refer to submissions to the Commission—or to a particular Commission officer, such as the Chief FOIA Officer—with references to ''filing'' and § 100.19(g), as appropriate, and by removing the Commission's street address from the definition of ''Commission.'' [61] These regulations are 11 CFR 1.3(b) (Privacy Act requests), 1.4(a) (same), 2.2(a) (Sunshine Act), 4.5(a)(4)(i) (FOIA requests), 4.5(a)(4)(iv) (same), 4.7(b)(1) (same), 4.8(c) (FOIA appeals), 11 CFR 5.5(a) (Public Disclosure records requests), 5.5(c) (public disclosure requests via FOIA), 6.103(b) (Rehabilitation Act), 6.170(d)(3) (Rehabilitation Act complaints), 6.170(i) (Rehabilitation Act appeals), 7.2(a) (standards of conduct), 100.9 (definition of ''Commission''), 102.2(a)(1) (statements of organization), 111.4(a) (enforcement complaints), 111.15(a) (motions to quash or modify subpoena), 111.16(c) (probable cause briefs), 112.1(e) (advisory opinion requests), 112.3(d) (advisory opinion comments), 200.2(b)(5) (petitions for rulemaking), 9002.3 (definition of ''Commission''), and 9032.3 (same).

For the same reasons, the Commission also proposes to amend other regulatory requirements relating to communications by mail:

- Sections 4.5(a)(4)(i) and 4.8(b) currently require that certain information be included ''on the envelope'' in which a FOIA request or appeal is sent to the Commission. As revised, these regulations would state that such information must be clearly indicated on the ''envelope or subject line, or in a similarly prominent location'' of the communication.
- Section 112.4(g) currently provides that an advisory opinion must be ''sent by mail, or personally delivered'' by the Commission to the person who requested it. As revised, the provision would require only that the advisory opinion ''be provided'' by the Commission to the requestor, so as to encompass electronic transmission of the advisory opinion.
- Section 102.6(c)(2) currently provides that a solicitation of contributions to a separate segregated fund may be included ''in'' a bill for membership dues. Because such bills are now sometimes delivered electronically, rather than in paper form, the Commission proposes to change ''in'' to ''with.'' The substantive requirements for soliciting contributions to a separate segregated fund would not change.[62]
- In § 114.1(g), which provides a non-exhaustive list of the manner in which

[56] *See* Electronic Contributor Redesignations, 76 FR at 16233.

[57] The National Association of Secretaries of State issued a study in 2011 that examined electronic notarization as used in 16 states. *See* Nat'l Assoc. of Secs. of State, *Issues and Trends in State Notary Regulation: NASS Report on State Notarization Policies and Practice* 10–11 (2011); *see also Electronic Notarization,* Notary Pub. Adm'rs, *www.npa-section.com/electronicnotarization.html* (last updated July 2016) (showing 23 states authorizing electronic notarization); Lisa Prevost, *The E-Notary Public Is Slow to Catch On,* N.Y. Times, May 22, 2015, *www.nytimes.com/2015/05/24/realestate/the-e-notary-public-is-slow-to-catch-on.html* (discussing remote electronic notarization).

[58] *See, e.g.,* 11 CFR 1.3(b) (Privacy Act requests), 111.4(a) (complaints), 111.15(a) (motions to quash or modify subpoena), 112.1(e) (advisory opinion requests), 112.3(d) (comments on advisory opinion requests).

[59] *See, e.g.,* FEC, Searchable Electronic Rulemaking System—Basic Search, *sers.fec.gov/fosers* (release date June 14, 2013) (web portal for commenting on rulemakings).

[60] *See, e.g.,* FEC, Procedures Regarding Draft Advisory Opinions, *www.fec.gov/law/draftaos.shtml* (establishing email address for comments on draft advisory opinions) (last visited Oct. 5, 2016).

[61] Because the definitions in part 100 of the Commission's regulations generally do not apply to parts 1–8 of the regulations, the proposed references to ''filing'' in parts 1–8 would explicitly incorporate by reference new 11 CFR 100.19(g).

[62] The twice-annual solicitation of employees outside of the restricted class may be conducted only by mail sent to the employee's residence. *See* 52 U.S.C. 30118(b)(4)(B); 11 CFR 114.6(c). Thus, the proposed change to 11 CFR 102.6(c)(2), which would allow for solicitations by means other than mail, would not apply to these twice-yearly solicitations.

a solicitation may be made, the Commission proposes to add ''emails'' to the existing list of ''mailings, oral requests . . . , and hand distribution of pamphlets'' to recognize that solicitations may be made electronically.[63]

• In § 116.9(a)(2), which describes what constitutes a political committee's reasonable diligence in attempting to locate a creditor, the Commission proposes to add email as a valid means of attempting to contact the creditor.

• Sections 9003.1(b)(7) and 9033.1(b)(8) currently require submission of the ''name and mailing address'' of the person entitled to receive public fund payments on behalf of a candidate. The Commission proposes to require the person's email address, as well.

To allow for electronic filing, notice, and service of documents and records in the Commission's enforcement process, the Commission proposes several revisions to part 111 of its regulations. First, the Commission proposes to remove or limit requirements to file multiple copies of documents where multiple copies are no longer necessary. In 11 CFR 111.4(a), the Commission proposes to clarify that the requirement for a complainant to file three copies of a complaint applies to non-electronic filings only. In 11 CFR 111.15(a) and 111.16(c), the Commission proposes to delete the provisions that state that a respondent ''should . . . if possible'' file multiple copies of a motion or brief.

Second, the Commission proposes to revise the following regulations that currently refer to ''enclos[ing]'' a copy of a document: 11 CFR 111.5(a) (notification to respondent of complaint), 111.5(b) (same), and 111.16(b) (notification to respondent of probable cause recommendation). As revised, the regulations would provide that the Commission shall ''provide'' a copy of the relevant document.

Third, the Commission proposes to revise 11 CFR 111.13(c) and (d), which govern the service of subpoenas, orders, and notifications, to add explicit electronic service options. The regulations currently allow for service by a number of means, including by mail, in person, and ''by any other method whereby actual notice is given.'' The Commission proposes to revise this last clause to read ''by any other method, including electronically, whereby actual notice is given.'' [64]

Finally, at 11 CFR 111.23(a)(1), the Commission proposes to add ''email address'' to the list of information about respondent's counsel that must be provided to the Commission.

The Commission intends all of these proposed revisions to simplify and modernize the process by which it interacts with respondents and complainants during the enforcement process by providing options for electronic communications. Would these proposed revisions increase efficiency as intended? Would they create any additional burdens?

What other regulations would be implicated by the proposed revision to the definition of ''file, filed, or filing'' at 11 CFR 100.19? Should the Commission consider revising additional regulations to provide explicitly for electronic communications or for ''filing'' pursuant to the proposed definition?

D. Electronic Contributions

The Commission is proposing to revise its regulations to address electronic contributions. These revisions fall into three general categories that correspond to three stages in the electronic flow of funds from a contributor to a political committee: (1) When the contributor authorizes the transaction; (2) when the entity processing the payment (the ''payment processor'') [65] transfers the contribution to the recipient political committee; and (3) when the recipient political committee deposits the funds into its campaign depository. The Commission seeks comment on the proposed changes, especially in light of the standards and practices that vendors and payment processors use to process payments made by check, credit card, debit card, prepaid card, and other payment methods. The Commission is also seeking comment addressing the proposed rules in light of the methods by which vendors and payment processors verify a payor's identity, attribute payments, and collect, maintain, and transmit transaction records.[66] The Commission is particularly interested in the perspectives of operators and users of established and emerging electronic payment platforms—such as PayPal, Venmo, BitPay, Square, and other electronic wallet, swipe P2P, mobile app, and social media payment platforms—as to the operation of these proposed rules on those platforms.[67] The Commission also seeks comment on the proposed rules in light of how these practices and standards might change as new technologies emerge.

1. When a Contributor Authorizes a Transaction: Contribution is ''Made'' and ''Received''

For purposes of the contribution limits, Commission regulations specify that a contribution is made ''when the contributor relinquishes control over the contribution''; control is relinquished when the contribution ''is delivered by the contributor to the candidate, to the political committee, or to an agent of the political committee.'' 11 CFR 110.1(b)(6); *see also* 11 CFR 110.2(b)(6). The regulations further specify that a contribution that is mailed is considered to be made on the date of the postmark. *Id.*

Although the regulations are silent as to when electronic contributions are ''made,'' the Commission has addressed the issue of when credit card contributions are made in several advisory opinions. *See* Advisory Opinion 2012–07 (Feinstein for Senate); Advisory Opinion 2008–08 (Zucker); Advisory Opinion 1991–01 (Deloitte & Touche PAC); Advisory Opinion 1990–14 (AT&T). Generally, the Commission has concluded that a credit card

[63] The Commission does not propose to add an electronic reference to the non-exhaustive list at 11 CFR 114.1(f) of the manner in which a solicited contribution may be received because the list already includes payroll deduction, which may be accomplished electronically.

[64] The Commission does not propose to make any corresponding changes to 11 CFR 111.2(c)—which adds three days to each service period under part 111 for ''any paper'' served ''by mail''—because electronic submissions are essentially immediate and therefore do not require extensions to account for delivery time.

[65] Payment processors include, for example, such entities as First Data, PayPal, BitPay, m-Qube, and other commercial entities that process and transmit traditional, online, or text-message payments in the ordinary course of business.

[66] *See, e.g., Online Person-to-Person (P2P), Account-to-Account Payments and Electronic Cash,* Fed. Fin. Inst. Examination Council, *ithandbook.ffiec.gov/it-booklets/retail-payment-systems/payment-instruments,-clearing,-and-settlement/card-based-electronic-payments/online-person-to-person-(p2p),-account-to-account-(a2a)-payments-and-electronic-cash.aspx* (last visited Oct. 6, 2016).

[67] *See, e.g.,* Vindu Goel, *Facebook Announces a Payments Feature for Its Messenger App,* N.Y. Times, Mar. 17, 2015, *www.nytimes.com/2015/03/18/technology/facebook-announces-a-payments-feature-for-its-messenger-app.html;* Mike Isaac, *As Apple Pay Arrives, Witnessing the Next Step in Money. Maybe.,* N.Y. Times, Oct. 20, 2014, *www.nytimes.com/2014/10/21/technology/as-apple-pay-arrives-witnessing-the-next-step-in-money-maybe.html;* Vindu Goel, *Twitter Begins Testing a 'Buy' Button for Instant Purchases by Its Users,* N.Y. Times, Sept. 8, 2014, *nytimes.com/2014/09/09/technology/twitter-begins-testing-buy-button-for-posts.html;* Heather Kelly, *Twitter and Amex to Let You Pay with a Hashtag,* CNN (Feb. 12, 2013, 4:15 p.m.), *www.cnn.com/2013/02/11/tech/social-media/twitter-hashtag-purchases; see also www.chirpify.com* (last visited Oct. 5, 2016); *but see* Brian X. Chen, *Few Consumers Are Buying Premise of Mobile Wallets,* N.Y. Times, Apr. 27, 2014, *www.nytimes.com/2014/04/28/technology/few-consumers-are-buying-premise-of-mobile-wallets.html* (describing growth of mobile payment platforms as well as obstacles to wide public use).

contribution is made ''when the credit card or credit card number is presented, because at that point '[t]he contributor is strictly obligated by the card agreement to make payment of the credit card bill and incurs substantial penalties with possible collection fees and cancellation of future credit privileges for nonpayment.' '' Advisory Opinion 2008–08 (Zucker) at 3 (quoting Advisory Opinion 1990–14 (AT&T)); *see also* Advisory Opinion 2012–07 (Feinstein for Senate) at 5. The Commission proposes to revise 11 CFR 110.1(b)(6) and 110.2(b)(6) by adding a description of when electronic contributions—credit card or otherwise—are considered to be ''made.'' As revised, the regulations would build on the Commission's conclusions in the above-referenced advisory opinions by providing that a contribution made in an electronic transaction ''is considered to be made when the contributor authorizes the transaction.'' Does this description provide sufficient guidance? Should the regulations provide examples of specific types of ''electronic transactions,'' such as the physical presentation of a debit card; the entry of a credit or prepaid card number in an online form, in person, or by telephone; the transfer of a bitcoin; or the sending of a text message? Are such examples necessary to distinguish between electronic and non-electronic transactions? Would examples tied to specific technologies be limiting or risk becoming rapidly obsolete? The Commission is not proposing to specify how the new regulation would apply to electronic payments made long after they are authorized, such as those pursuant to recurring monthly payment authorizations.[68] Should the revised regulation address this scenario?

Like the existing regulations regarding when a contribution is ''made,'' the regulations concerning when a contribution is ''received'' focus on possession. The regulations provide that the ''date of receipt'' of a contribution is the date a person ''obtains possession of the contribution.'' 11 CFR 102.8(a); *see also* 11 CFR 102.8(b)(2) (same description of ''receipt'').[69]

In the context of credit card contributions, the Commission has stated that a contribution is received when the contributor's authorization to charge the credit card is received. ''Inasmuch as such authorizations may be presented to [the recipient's] bank in order to credit [the recipient's] account, the receipt of such an authorization is the equivalent of the receipt of a check that may be deposited and, thus, the date this occurs is the date upon which [the recipient] obtains possession of the contribution.'' Advisory Opinion 1990–04 (American Veterinary Medical Association PAC) at 2–3.[70] Because a commercial payment processor or the recipient political committee may receive the contributor's authorization before obtaining actual possession of the contributor's funds, the Commission proposes to revise 11 CFR 102.8(a) and (b)(2) to explicitly provide that the date of receipt is the date that a person either obtains possession of a contribution ''or, for a contribution made in an electronic transaction in which the receipt of authorization precedes the receipt of funds, obtains the contributor's authorization of the transaction.'' Does this proposed language provide sufficient guidance? Should it include specific examples to show when a contribution is received in different types of electronic transactions, such as when a debit card is physically presented, a credit card number is entered in an online form or given over the telephone, or a text message is sent?

2. Commercial Payment Processors: Revisions to the Conduit and Forwarding Rules

Many contributions are first received not by the ultimate recipient political committees, but by commercial entities that process the payments. In several recent advisory opinions, the Commission has addressed the application of its regulations to the receipt of contributions via commercial entities that process contributions electronically—including entities that process contributions made by text message[71] or via web-based platforms.[72] The Commission proposes to revise its forwarding regulations at 11 CFR 102.8 and its earmarking regulations at 11 CFR 110.6 to codify some of the conclusions of these advisory opinions.

a. Proposed Revisions To Forwarding Rule, 11 CFR 102.8

Section 102.8 implements FECA's requirement that ''[e]very person who receives a contribution'' for a political committee must forward the contribution and information about the contributor to the recipient political committee within either 10 or 30 days, depending on whether the recipient is an authorized or unauthorized committee and the amount of the contribution. 52 U.S.C. 30102(b)(2). Under the proposed revisions to the definition of ''receipt,'' discussed above, this forwarding requirement would be triggered when a commercial payment processor receives a contributor's authorization to make a contribution, even if the payment processor has not yet received the contributor's funds.

Because this scenario occurs frequently in modern electronic transactions,[73] the Commission proposes to add a new paragraph (d) to 11 CFR 102.8 to make clear that payment processors must satisfy FECA's forwarding requirement within 10 or 30 days of receiving a contributor's authorization of a contribution, even if the processor has not yet received the contributor's funds. Under proposed

[68] For example, Advisory Opinion 1991–01 (Deloitte & Touche PAC) concerned a political committee's proposal to obtain contributors' credit card authorizations several months before charging their credit cards for contributions. The Commission concluded that, ''[i]n view of the contributor's ability to revoke the authorization'' during this time period, each contributor would be deemed to relinquish control over a contribution, and thus to make the contribution, when the credit card was charged, rather than when the authorization occurred. Advisory Opinion 1991–01 (Deloitte & Touche PAC) at 4.

[69] *See also* 11 CFR 102.17(c)(3)(iii) (providing that political committee receives contribution through joint fundraising committee on date contribution is received by committee's joint fundraising representative), 9034.8(c)(4)(iii) (same).

[70] *See also* Advisory Opinion 2012–35 (Global Transaction Services Group) (determining that contributions made by credit or debit card are received as of date credit or debit card holder authorizes card to be charged with contribution); Advisory Opinion 2012–17 (Red Blue T *et al.*) at 6 (''m-Qube I'') (''Under m-Qube's proposed factoring arrangement, which is similar to how credit card contributions are handled, the Commission considers the contributions to be received at the time of the opt-in, as opposed to when the bill is paid.''); FEC, Campaign Guide: Congressional Candidates and Committees 23, 74 (2014), *www.fec.gov/pdf/candgui.pdf.*

[71] *See, e.g.,* Advisory Opinion 2012–30 (Revolution Messaging); Advisory Opinion 2012–28 (CTIA—The Wireless Association) (''CTIA II''); Advisory Opinion 2012–26 (Cooper for Congress *et al.*) (''m-Qube II''); Advisory Opinion 2012–17 (m-Qube I); Advisory Opinion 2010–23 (CTIA—The Wireless Association) (''CTIA I'').

[72] *See, e.g.,* Advisory Opinion 2014–07 (Crowdpac); Advisory Opinion 2012–35 (Global Transaction Services Group); Advisory Opinion 2012–22 (skimmerhat); Advisory Opinion 2012–09 (Points for Politics); Advisory Opinion 2011–19 (GivingSphere); Advisory Opinion 2011–06 (Democracy Engine *et al.*); Advisory Opinion 2007–04 (Atlatl); Advisory Opinion 2006–08 (Brooks).

[73] For example, when a credit card holder uses a credit card to purchase goods or services from a merchant, the merchant often receives payment for the goods and services before the credit card holder is even billed. *See* Visa, *https://usa.visa.com/run-your-business/accept-visa-payments.html* (follow ''Learn how Visa transactions work'' hyperlink and click play arrow) (last visited Oct. 5, 2016); *What We Do,* Mastercard, *www.mastercard.com/us/company/en/whatwedo/processing_behind_transaction.html* (last visited Oct. 6, 2016). Similarly, in certain text message transactions, payment processors transmit funds to merchants before the mobile phone users pay bills with associated charges. *See* Advisory Opinion 2010–23 (CTIA I); Advisory Opinion 2012–17 (m-Qube I).

paragraph (d), a payment processor will satisfy the forwarding requirements of 52 U.S.C. 30102(b) if it transmits funds and contributor information to a recipient political committee within 10 or 30 days, as applicable, of the contributor's authorization of the transaction. To ensure that a payment processor does not make contributions to candidates and committees by transmitting the funds, the payment processor must meet this forwarding requirement in its ordinary course of business. *See, e.g.,* 11 CFR 116.3; Advisory Opinion 2012–26 (m-Qube II); Advisory Opinion 2012–31 (AT&T).

The proposal would thus reflect how modern transactions are conducted and ensures that FECA's forwarding requirement is satisfied when contributors and political committees make and receive contributions electronically.[74] *See* Advisory Opinion 2012–35 (Global Transaction Services Group) at 4 (approving proposal where processor transmitted contributions to political committees within ten days); Advisory Opinion 2010–23 (CTIA I) at 6–7 (rejecting proposal to process contributions by text message because, in part, contributions would not be forwarded to recipient committees within timeframe required by 52 U.S.C. 30102(b) and 11 CFR 102.8).

Should the Commission adopt this approach? Is it consistent with how electronic transactions are conducted? The Commission is not proposing regulatory language to define ''ordinary course of business'' but expects that the term would be construed consistently with the definition of the same term in 11 CFR 116.3(c), which looks to the vendor's past practices, as well as industry custom, to determine whether the vendor acted in the ordinary course of business. Should the Commission revise the proposed rule to reflect this expectation?

[74] In Advisory Opinion 2012–17 (m-Qube I), the Commission approved a proposal to process contributions made by text message, even though the processor would provide funds to the recipient political committees before the contributors had paid their mobile phone bills. *Id.* at 10. The Commission explained that the transmitted funds were extensions of credit in the ordinary course of business, ''not contributions that [the processor] received and forwarded.'' *Id.* at 7, 10. And because the forwarding requirements of 52 U.S.C. 30102(b) and 11 CFR 102.8 are triggered only upon the receipt of a contribution—not when a vendor extends credit—the payments ''do not implicate the forwarding requirements.'' *Id.* at 10. The Commission's rationale in that advisory opinion applied the existing regulations, which the Commission here proposes to revise.

b. Proposed Revisions to Earmarking Rule, 11 CFR 110.6

FECA provides that, for purposes of the contribution limitations, ''all contributions made by a person, either directly or indirectly . . ., including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.'' [75] 52 U.S.C. 30116(a)(8). The Commission defines ''earmarked'' to mean ''a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution . . . being made to . . . a clearly identified candidate.'' 11 CFR 110.6(b)(1).

Whether a person is a ''conduit or intermediary'' turns on whether the person ''receives and forwards an earmarked contribution to a candidate.'' 11 CFR 110.6(b)(2). Persons prohibited from making contributions and expenditures, however, are also prohibited from being conduits or intermediaries. 11 CFR 110.6(b)(2)(ii). Thus, because FECA prohibits corporations from making contributions to candidate committees, *see* 52 U.S.C. 30118, a corporation generally may not receive and forward earmarked contributions.

The Commission's regulations provide for certain exceptions to this rule, *see* 11 CFR 110.6(b)(2)(i), but these exceptions do not squarely apply to the kinds of payment processors that the Commission has addressed in its recent advisory opinions regarding electronic contributions. In some of these opinions, the Commission concluded that the transactions were permissible because the corporations that processed the contributions were acting as commercial vendors to the political committee.[76] In other opinions, the Commission approved the transactions under the rationale that the corporations were providing services to the contributors.[77] And in Advisory Opinion 2012–22 (skimmerhat), the Commission determined expressly that a for-profit corporation that processed customers' contributions to candidates via the corporation's Web site was not a conduit. *Id.* at 5–6. The Commission explained that ''certain electronic transactional services . . . do not run afoul of the prohibition on corporations acting as a conduit or intermediary for earmarked contributions because certain electronic transactional services are so essential to the flow of modern commerce that they are akin to 'delivery services, bill-paying services, or check writing services.' '' *Id.* at 10 (citing Advisory Opinion 2011–06 (Democracy Engine)); *see also* Advisory Opinion 2014–07 (Crowdpac) (approving commercial processor's transmission of contributions to candidates); ActBlue, Comment at 5, *sers.fec.gov/fosers/showpdf.htm?docid=297360* (stating that without electronic payment processors, ''committees would not be able to raise campaign funds on the Internet or by credit card at all'').

The Commission now proposes to revise § 110.6 to clarify the regulatory status of electronic payment processors and bring the rule into line with the role of ''certain electronic transactional services [that] are so essential to the flow of modern commerce.'' Advisory Opinion 2012–22 (skimmerhat) at 10. The Commission proposes to do so by exempting commercial payment processors from the definition of ''conduit or intermediary'' in a proposed new paragraph (F) of 11 CFR 110.6(b)(2)(i). The Commission is proposing two alternative versions of new paragraph (F). Alternative A of proposed paragraph 110.6(b)(2)(i)(F) would provide that a commercial payment processor is any person whose usual and normal business is to process payments and who processes payments to candidates and authorized committees in the ordinary course of business without exercising direction or control over the choice of the recipient candidate or authorized committee. Alternative B of proposed § 110.6(b)(2)(i)(F) would differ only in that Alternative B would not expressly state that a commercial payment processor operates without exercising direction or control over the choice of the recipient candidate or authorized committee.

The Commission seeks comment on the alternatives. Specifically, does Alternative A accurately reflect and codify Commission determinations made in approving prior advisory opinions regarding commercial payment processors? *See, e.g.,* Advisory Opinion 2014–07 (Crowdpac) at 4. Does Alternative B accurately reflect and codify Commission determinations that, for example, ''where a commercial vendor provides contribution processing

[75] Thus, earmarked contributions are ''subject to the original contributors' limits on contributions to the candidate.'' Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 FR 34098, 34105 (Aug. 17, 1989).

[76] *See* Advisory Opinion 2007–04 (Atlatl); Advisory Opinion 2004–19 (DollarVote.org); *see also* Advisory Opinion 2012–09 (Points for Politics).

[77] *See* Advisory Opinion 2011–19 (GivingSphere); Advisory Opinion 2011–06 (Democracy Engine); Advisory Opinion 2006–08 (Brooks).

services to contributors, the contributions made through the platform . . . are . . . direct contributions to the candidate . . . made via a commercial processing service'' and not earmarked contributions through a conduit or intermediary? Advisory Opinion 2016–08 (*eBundler.com*) at 8. Would the reference to ''direction or control'' in Alternative A be clear in light of the use of that term at § 110.6(d)? Would the omission of ''direction or control'' in Alternative B be clear in light of Commission determinations made in advisory opinions?

The Commission anticipates that specific applications of the exemption, regardless of which Alternative is selected, will be informed by its prior advisory opinions and refined through future advisory opinions. The proposed term ''commercial payment processors'' would not distinguish between persons who process contributions as a service to contributors and those who process contributions as a service to candidates and authorized committees. Thus, the term would encompass processors that transmit funds from wireless service providers to recipient committees, as well as online payment systems such as PayPal and Square, and the requestors in the advisory opinions in which the Commission has approved electronic payment processing.[78] The Commission anticipates, however, that the distinction will remain relevant to determine whether fees associated with contributions made through commercial payment processors are considered part of the contributed amount. As the Commission has explained in several advisory opinions, where a contributor's payment of a fee would ''relieve the recipient political committee[ ] of a financial burden [it] would otherwise have had to pay,'' the fee would be considered a contribution. *See, e.g.,* Advisory Opinion 2015–15 (*WeSupportThat.com*) at 5 (quoting Advisory Opinion 2014–07 (Crowdpac) and Advisory Opinion 2011–06 (Democracy Engine)).

The Commission intends the proposed revision to 11 CFR 110.6(b)(2)(i) to clarify and codify its existing guidance on the issue, and thus to encourage the use of evolving and emerging technological innovations to process contributions electronically. Does the proposal provide sufficient guidance and clarity to the regulated community as to which persons are not considered conduits and intermediaries? Should the Commission bring § 110.6 in line with the flow of modern commerce by revising the definition of ''earmarked'' at 11 CFR 110.6(b)(1) rather than revising the definition of ''conduit or intermediary'' at 11 CFR 110.6(b)(2)? For example, should the Commission clarify that the definition of earmark does not generally include a contributor's authorization to initiate an electronic transaction? Additionally, is existing guidance sufficient with respect to how political committees should report contributions received via commercial payment processors?

Furthermore, in addition to concluding that commercial payment processors are not conduits under 11 CFR 110.6, the Commission has also determined that where a commercial payment processor provides its services to its customers, as opposed to the political committees that receive the customers' contributions, the processor itself would not make contributions to the recipient political committees. *See, e.g.,* Advisory Opinion 2015–15 (WeSupportThat.com) at 4 (''Identifying candidates whose activities are of interest to its users, and processing users' contributions to those candidates, are services that the requestor may permissibly provide to its users.''); Advisory Opinion 2014–07 (Crowdpac) at 6 (''Accordingly, Crowdpac's proposal to match users with candidates and utilize the . . . platform to process and forward users' contributions to candidates would not result in impermissible contributions by Crowdpac to federal candidate committees.''). The Commission seeks comment as to whether it should promulgate regulatory language that codifies these determinations, and if so, where in its regulations.

3. When a Political Committee Deposits the Contribution: Campaign Depositories, Merchant Accounts, Recordkeeping, and Internet-Based Alternative Mediums of Exchange

Once a political committee has received a contribution, it must deposit that receipt in an account at a campaign depository within ten days. 52 U.S.C. 30102(h)(1); 11 CFR 103.3(a). The campaign depository must be a state bank, federally chartered depository institution, or depository institution with accounts insured by certain federal agencies. *See* 52 U.S.C. 30102(h)(1); 11 CFR 103.2; *see also* 11 CFR 102.2(a)(1)(vi) (disclosure of campaign depositories).

The Commission is proposing to revise several regulations to address issues related to the deposit into campaign depositories of contributions made electronically. First, the Commission proposes to revise 11 CFR 103.3(a) to clarify the campaign depository requirements with respect to joint merchant accounts. Second, the Commission proposes to revise 11 CFR 102.9(a)(4) and 9036.1(b)(4) to address recordkeeping related to the electronic transfer of contributions from a payment processor to a political committee's campaign depository. Finally, the Commission is considering whether to revise 11 CFR 103.3(a) and 102.10 to address how the requirements for deposits to and disbursements from campaign depositories apply to contributions of internet-based alternative mediums of exchange, such as bitcoin.

a. Proposed Changes Regarding Campaign Depositories for Joint Merchant Accounts—11 CFR 103.3

Many political committees and payment processors use merchant accounts to process contributions. As one commenter noted in response to the ANPRM: ''In order to accept credit card contributions, the committee must have a merchant account with the payment processor which is connected to the Web site on the contribution end and to a specific bank account on the processing end.'' ActBlue, Comment at 2, *sers.fec.gov/fosers/showpdf.htm?docid=297360.* The commenter characterized the merchant account system that is used for payment transfers as ''nothing but an accounting tool which operates purely as a pass-through.'' *Id.* at 4.

Merchant accounts operated and controlled by a payment processor may contain contributions for several different political committees. *See* Advisory Opinion 1995–34 (Politechs) n.6 (describing processing of contributions for multiple committees through one merchant account). The Commission has indicated that a political committee receiving funds through one of these merchant accounts should report and treat the merchant account as a campaign depository account. *Id.; see also* Advisory Opinion 1999–22 (Aristotle Publishing) (approving proposal under which recipient political committees would report payment processor's FDIC-insured merchant account through which their contributions flowed as campaign depository accounts); Advisory Opinion 2012–07 (Feinstein

[78] Because the proposed clarification also does not turn on the incorporation status of a payment processor, a limited liability company that opts to be treated like a partnership for tax purposes could process contributions to candidates in the ordinary course of business without being considered a conduit or intermediary. *See* Advisory Opinion 2012–09 (Points for Politics).

for Senate) at 5 n.9 (reaffirming that ''joint merchant account'' of type described in Advisory Opinion 1999–22 (Aristotle Publishing) is campaign depository).

The Commission is now reconsidering its earlier requirement that political committees should report the joint merchant accounts through which their contributions flow as their own campaign depository accounts. The Commission is not convinced of the disclosure or compliance value of reporting a third party's pass-through account, which the recipient political committee does not own, operate, or control, as the committee's own account. *See* ActBlue, Comment at 4, *sers.fec.gov/fosers/showpdf.htm?docid=297360* (noting that merchant accounts are standard aspect of credit card processing and arguing that therefore ''there is no need to treat merchant accounts as campaign depositories which must be registered with the Commission'').

The Commission proposes to amend 11 CFR 103.3(a), which governs the deposit of receipts in campaign depositories, to provide that contributions deposited in the ordinary course of business in the merchant account of a person whose usual and normal business involves the electronic processing and transmission of payments are not ''receipts'' of the recipient political committee, but are, instead, contributions to be forwarded by the processor under 11 CFR 102.8.[79] Together with the revisions to § 102.8 discussed above, this proposed amendment would ensure that electronic payments passing through merchant accounts comply with the FECA's forwarding requirements, while also adapting the campaign-depository rule to account for the ways in which electronic payments differ from the cash and check contributions that predominated when those requirements were enacted.

This proposed change is not intended to apply to merchant accounts over which a recipient political committee exercises control. Should the Commission make this limitation explicit, or does the reference to a payment processor's ''ordinary course of business'' suffice? Alternatively, should the Commission update its campaign-depository rules by revising 11 CFR 103.2, which defines the term ''campaign depository,'' instead of 11 CFR 103.3(a)? Under either approach, should the Commission expressly supersede Advisory Opinion 1995–34 (Politechs), Advisory Opinion 1999–22 (Aristotle Publishing), and Advisory Opinion 2012–07 (Feinstein for Senate), to the extent that these advisory opinions can be read as requiring political committees to treat joint merchant accounts as their own campaign depository accounts?

b. Proposed Changes to Recordkeeping—11 CFR 102.9(a)(4) and 9036.1(b)(4)

As noted above, FECA and Commission regulations require any person who receives a contribution for or on behalf of a political committee to forward the contribution and information about the contributor to the political committee within a certain period of time. 52 U.S.C. 30102(b)(2); 11 CFR 102.8(a). The Commission has seen, through its auditing function, that committees often receive contributions separately from contributors' information; that is, payment processors often forward contributions as an aggregated amount but forward information about each individual contributor separately. Because of this, marrying individual contributor information with the recipient political committee's records of receipts and deposits can be a challenge when committees are audited.

To address these challenges, the Commission proposes to revise 11 CFR 102.9(a)(4). Section 102.9(a)(4) currently requires political committees to maintain, for each contribution that they receive in excess of $50, either (i) a full-size photocopy of the check or written instrument, or (ii) a digital image of the check or written instrument. As revised, paragraphs (4)(i) and (4)(ii) would be replaced with a new paragraph (4), which would require political committees to maintain a ''record'' of each contribution received. For checks or written instruments in excess of $50, the revised rule would still require treasurers to maintain an image of the instrument. For all contributions, the revised rule would add a requirement that a record of the receipt must include sufficient information associating that contribution with its deposit in the political committee's campaign depository, such as a batch number. The revised rule would also remove the requirement that committees provide the Commission with the electronic means to read such records because that requirement would appear in the proposed new definition of ''record'' discussed above.

The Commission proposes a similar revision to the recordkeeping provision at 11 CFR 9036.1(b)(4), which applies to bank documentation of deposits of publicly matched contributions. Section 9036.1(b)(4) requires a candidate to submit ''bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statements, which indicate that the contributions were deposited into a designated campaign depository.'' The Commission proposes to add, after ''relevant bank statements,'' language that would apply to electronic deposits: ''or, for deposits made electronically, information associating contributions to their deposit in the designated campaign depository, such as a batch number.''

The Commission invites comment on whether the proposed rule provides sufficient guidance to enable information about specific contributions and contributors to be matched to political committees' aggregated receipt and deposit of contributions. If so, is the proposed rule flexible enough to accommodate evolving methods of electronic transfers? The Commission is also interested in comment addressing whether the specificity required of records of checks and written instruments is still necessary in light of the new definition of ''record,'' discussed above.

c. Contributions of Internet-Based Alternative Mediums of Exchange—11 CFR 102.10 and 103.3

The Commission is considering whether to revise its rules regarding the receipt of contributions in the form of bitcoin and other internet-based alternative mediums of exchange that cannot currently be deposited in campaign depositories. In Advisory Opinion 2014–02 (Make Your Laws PAC), the Commission determined that a political committee could accept $100 worth of bitcoin contributions per contributor per election. Bitcoin is a privately issued alternative medium of exchange that exists ''only as a long string of numbers and letters in a user's computer file.'' [80] Users receive transfers of bitcoin into their online bitcoin ''wallets'' (essentially, encrypted computer files) and can transfer bitcoin from those ''wallets'' to other users, to merchants to purchase goods or services, or to exchanges to convert into government-issued currency.[81] At this

[79] For ease of reading, the Commission also proposes to divide § 103.3(a) into two subparts to address the two distinct issues (receipts and disbursements) addressed therein.

[80] U.S. Gov't Accountability Office, GAO–13–516, *Virtual Economies and Currencies* 5 (2013), *www.gao.gov/assets/660/654620.pdf.*

[81] *Id.; see also* Francois R. Velde, Fed. Reserve Bank of Chi., No. 317, *Bitcoin: A Primer* 2 (2013), *www.chicagofed.org/digital_assets/publications/chicago_fed_letter/2013/cfldecember2013_317.pdf* (describing bitcoin wallet).

time, the Commission is aware of no institution that meets the statutory criteria of a campaign depository, *see* 52 U.S.C. 30102(h), and that maintains bitcoin wallet ''accounts'' for its customers. The Commission seeks comment as to whether the unique nature of bitcoin and other internet-based alternative mediums of exchange pose any potential challenges under FECA, such as achieving meaningful disclosure, which necessitates regulatory amendment.

Current Commission regulations establish procedures for political committees to receive and report in-kind contributions of ''stocks, bonds, art objects, and other similar items to be liquidated.'' 11 CFR 104.13(b). Under this provision, political committees may accept such items as in-kind contributions and hold them as investments outside of their campaign depositories until later sale, without being subject to the 10-day deposit requirement. *See* Advisory Opinion 2000–30 (*pac.com*) at 8 (citing Advisory Opinion 1989–06 (Friends of Sherwood Boehlert) and Advisory Opinion 1980–125 (Cogswell for Senate Committee 1980)).

The Commission is interested in comment on whether the inability to deposit bitcoin and other alternative mediums of exchange in a campaign depository necessitates treating contributions of such alternative mediums of exchange as in-kind contributions rather than contributions of money. Should the Commission revise 11 CFR 103.3 to clarify that all receipts by a political committee must be deposited in campaign depositories, except for in-kind contributions that cannot be deposited? The Commission seeks comment on how best to reconcile an interpretation allowing in-kind contributions to not be deposited in a campaign depository with FECA's requirement that ''all receipts . . . shall be deposited'' in an account at a campaign depository. *See* 52 U.S.C. 30102(h)(1).

Related to the question of whether in-kind receipts must be deposited in a campaign depository is the question of how to interpret the statutory requirement that all disbursements be made from a campaign depository. The Commission has reached differing conclusions in advisory opinions on whether in-kind contributions received and held outside of a campaign depository may be disbursed from outside of that depository or whether they must first be liquidated and deposited in a campaign depository prior to disbursement.[82] Should the Commission revise 11 CFR 102.10 to specify that a disbursement need not be made from a campaign depository if the asset being disbursed was not required to be deposited into a campaign depository? The Commission seeks comment on how best to reconcile an interpretation allowing the disbursement of assets held outside campaign depositories with the statutory requirement that ''[n]o disbursements may be made . . . except by check drawn'' on an account at a campaign depository. *See* 52 U.S.C. 30102(h)(1).

E. Other Considerations in Electronic Contributions and Disbursements

The Commission is considering revisions to other regulations to modernize requirements concerning the receipt of ''currency'' and ''cash''; the receipt, disbursement, and transfer of funds; the records of contributions eligible for public matching funds; and the designation and attribution of contributions in light of electronic transactions and records.

1. ''Currency'' and ''Cash''—11 CFR 110.4

The term ''contribution'' includes gifts, advances, and deposits of ''money'' by any person for the purpose of influencing a federal election.[83] The term ''money'' includes ''currency of the United States or of any foreign nation,'' as well as checks, money orders, and any other negotiable instrument payable on demand.[84]

The legislative history of FECA indicates that Congress was particularly concerned about the role of cash in federal elections. As one legislator noted, ''cash offers too facile a medium for unethical and illegal activities''; its ''untraceability'' and ''easy transferability'' were of particular concern. 120 Cong. Rec. H7832 (daily ed. Aug. 7, 1974) (statement of Rep. Boland). Thus, Congress limited contributions of currency to $100. 52 U.S.C. 30123.[85] Commission regulations also prohibit the use in federal elections of any portion of an anonymous ''cash'' contribution that exceeds $50.[86]

Some non-cash electronic payment methods—particularly prepaid cards and internet-based alternative mediums of exchange—have characteristics very similar to cash. Like currency, prepaid cards and some internet-based alternative mediums of exchange are easily transferable and relatively untraceable. They are not associated with a depository institution and thus are not subject to those institutions' ''know-your-customer'' obligations under federal law.[87] All that a person needs to acquire and use prepaid cards in amounts within FECA's contribution limits is sufficient cash to purchase the cards. Similarly, ''all that is needed to complete a [bitcoin] transaction is a bitcoin address, which does not contain any personal identifying information.'' [88]

Because prepaid cards present the same concerns as those noted by Congress when it limited contributions of currency to $100, the Commission proposes to update its rules to apply the limitations on contributions of cash or currency at 11 CFR 110.4(c) to contributions made by prepaid cards. To accomplish this, the Commission proposes to add paragraph (c)(4) to 11 CFR 110.4 to clarify that a ''cash contribution'' includes a contribution (1) of currency of the United States or any foreign country, or (2) made using a prepaid card. The Commission also proposes to make a conforming change to 11 CFR 110.4(c)(1) by updating the current prohibition on making contributions aggregating more than $100 in ''currency of the United States, or of any foreign country'' to apply to any ''cash contribution,'' as provided in proposed 11 CFR 110.4(c)(4).

The Commission intends the term ''prepaid card'' to mean a card, payment code, or device that is not linked to the contributor's checking, savings, or other depository account but is instead purchased or loaded on a prepaid basis and honored, upon presentation, by merchants for goods or services, or at automated teller machines, as provided in federal electronic transfer consumer rights protection laws. *See* 15 U.S.C. 1693l–1(a)(2)(A). The Commission seeks comment on whether it should define

[82] *Compare* Advisory Opinion 1982–08 (Barter PAC) (allowing disbursement of ''credit units'' in that form), *with* Advisory Opinion 2000–30 (*pac.com*) (requiring liquidation and deposit prior to disbursement).

[83] 52 U.S.C. 30101(8)(A)(i); 11 CFR 100.52(a); *see also* 52 U.S.C. 30101(9)(A)(i); 11 CFR 100.111(a) (corresponding provisions for the term ''expenditure'').

[84] 11 CFR 100.52(c); *see also* 11 CFR 100.111(d) (corresponding provision for expenditures).

[85] *See also* 11 CFR 110.4(c) (also referring to such contributions as ''cash''), 9034.3(j) (disallowing matching funds for contributions of currency of United States or foreign country).

[86] 11 CFR 110.4(c)(3); *see also* 52 U.S.C. 30102(c)(2) (requiring name and address of contributors for contributions over $50).

[87] *See, e.g.,* 31 CFR 1020.220(a) (setting forth customer identification programs for banks, credit unions, and other depository institutions, including through records of customer names and addresses).

[88] U.S. Gov't Accountability Office, GAO–13–516, *Virtual Economies and Currencies* 8 (2013), *available at gao.gov/assets/660/654620.pdf.*

the term ''prepaid card'' in the regulations themselves or whether it should otherwise update its rules for cash contributions to apply to prepaid cards.

The Commission also seeks comment on any compliance challenges that might result from the proposed rule if adopted. In particular, one commenter noted in response to the ANPRM that a political committee that receives a contribution from a prepaid card ''is unlikely to know that . . . a prepaid card'' has been used to make the payment because ''a prepaid card is treated the same as any other payment card'' in the payment processing.[89] The Commission understands, however, that prepaid card issuers are able to exclude certain categories of merchants from receiving payments made by prepaid cards.[90] Could political committees, as a category of merchants,[91] use this or another mechanism (such as partial authorization) to decline contributions made by prepaid cards either entirely or in excess of $100? Should the Commission create a safe harbor for committees that take certain steps to limit or exclude prepaid card contributions, whether by requiring contributor affirmations, by arranging with prepaid card issuers not to authorize prepaid card contributions to them exceeding $100, or by some other means?

Although internet-based alternative mediums of exchange such as bitcoin are not currency of the United States or of any foreign country, as noted above, they have characteristics very similar to cash (*e.g.,* easily transferrable and relatively untraceable). Other government entities and courts have grappled with whether internet-based alternative mediums of exchange such as bitcoin are ''money,'' and whether and how such alternative mediums of exchange should be subject to law in other contexts.[92] Should the Commission revise its regulations to treat contributions of bitcoin and other internet-based alternative mediums of exchange as cash contributions or, as discussed above, as in-kind contributions? If the Commission should revise its regulations to address internet-based alternative mediums of exchange, should the Commission treat contributions of internet-based alternative mediums of exchange in the same manner as it proposes to treat cash cards?

2. Updating References to Contributions and Disbursements by Check

a. Committee Disbursements by Electronic Transfer

FECA requires each political committee to maintain at least one checking account and to make all disbursements (other than from petty cash) ''by check.'' 52 U.S.C. 30102(h)(1). The Commission has implemented this requirement in regulations that require all disbursements (other than petty cash disbursements) to be made ''by check or similar draft drawn on'' a campaign depository account. 11 CFR 102.10; *see also* 11 CFR 103.3(a) (same). The Commission has further interpreted the term ''similar draft'' to include certain forms of electronic disbursement.[93] Consistent with these prior interpretations and in light of the increasing use of electronic transactions in the campaign finance arena, the Commission proposes to revise 11 CFR 102.10 and 103.3(a) to provide that disbursements may be made by ''check or similar draft, including electronic transfer'' from a campaign depository; to revise 11 CFR 110.1(b)(3)(i)(A) to enable political committees to refund contributions by ''committee check or similar draft, including electronic transfer''; and to revise 11 CFR 110.6(c)(1)(iv)(C) to require conduits and intermediaries to report earmarked contributions that are forwarded by electronic transfer, in addition to reporting earmarked contributions forwarded in cash or by the contributor's or conduit's check. The Commission intends these revisions to be consistent with the Commission's prior interpretations of the terms ''check'' or ''similar draft'' and seeks comment on the proposed revisions.

b. Recordkeeping for Disbursements by Electronic Transfer

In light of the proposed regulatory revisions for disbursements by electronic transfer, and because checks may now be processed electronically without the creation of a canceled check,[94] the Commission proposes to revise the recordkeeping requirements for political committee disbursements. Section 102.9(b) describes the records that political committees must keep of their disbursements. The Commission proposes to revise 11 CFR 102.9(b)(2), (b)(2)(i)(B), and (b)(2)(ii), which currently require committees to keep a ''cancelled check'' to a payee or recipient (among other records of disbursements) to provide that a record of disbursement may consist of a ''canceled check or record of electronic transfer'' to the payee or recipient. The Commission also proposes to remove 11 CFR 102.9(b)(2)(iii), which requires political committees to document disbursements made by share drafts or checks drawn on credit union accounts, because this provision would no longer be necessary in light of proposed changes to the recordkeeping provisions in other parts of § 102.9.

Sections 9003.5(b) and 9033.11(b) contain the disbursement documentation requirements for publicly financed candidates. The Commission proposes to revise 11 CFR 9003.5(b)(1), 9003.5(b)(1)(iv), 9003.5(b)(2)(ii), 9033.11(b)(1), 9033.11(b)(1)(iv), and 9033.11(b)(2)(ii) to provide explicitly that a record of disbursement may consist of a ''record of electronic transfer to the payee,'' in addition to canceled checks negotiated by the payee. The Commission seeks comment on these proposed changes.

c. Electronic Funds Transfers Related to Separate Segregated Fund Administration

The Commission intends to make similar revisions to two regulations relating to contributions by ''check'' to a separate segregated fund (''SSF''). First, the Commission proposes revising 11 CFR 102.6(c)(3), which provides that a contributor may ''write a check'' representing both a contribution to an SSF and a payment of dues or other fees ''drawn on the contributor's personal checking account or on a non-repayable

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[89] *See* ActBlue, Comment at 6, *sers.fec.gov/fosers/showpdf.htm?docid=297360.*

[90] *See, e.g.,* Visa, *Visa Core Rules and Visa Product and Service Rules* 209 (2015), *https://usa.visa.com/dam/VCOM/download/about-visa/15-April-2015-Visa-Rules-Public.pdf* (indicating that selective authorization may be based on criteria including merchant category classification).

[91] *See* Visa, *Visa Merchant Category Classification (MCC) Code Directory, www.dm.usda.gov/procurement/card/card_x/mcc.pdf* (noting MCC code of 8651 for political organizations) (last visited Oct. 6, 2016).

[92] *See, e.g., SEC* v. *Shavers,* No. 4:13–CV–416, 2013 WL 4028182, at *2 (E.D. Tex. Aug. 6, 2013); Craig K. Elwell *et al.,* Cong. Research Serv., R43339, *Bitcoin: Questions, Answers, and Analysis of Legal Issues* (2015), *www.fas.org/sgp/crs/misc/R43339.pdf* (providing overview of federal, state, and international legal issues); Fin. Crimes Enforcement Network, U.S. Dep't of the Treasury, FIN–2013–G001, *Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies* (2013), *www.fincen.gov/statutes_regs/guidance/pdf/FIN–2013–G001.pdf.*

[93] *See, e.g.,* Advisory Opinion 1993–04 (Christopher Cox Congressional Committee) (approving ''computer driven billpayer service'' that disbursed funds by electronic transfer); Advisory Opinion 1982–25 (Barbara Sigmund for Congress Committee) (concluding that wire transfer qualifies as ''similar draft'').

[94] *See* Susan Johnston Taylor, *How to Deposit Checks With Your Smartphone,* U.S. News and World Report, Oct. 9, 2012, *http://money.usnews.com/money/personal-finance/articles/2012/10/09/how-to-deposit-checks-with-your-smartphone.*

corporate drawing account of the individual contributor.'' 11 CFR 102.6(c)(3). In Advisory Opinion 1990–04 (American Veterinary Medical Association PAC), the Commission interpreted this provision as allowing a combined payment by credit card. Consistent with the approach in that advisory opinion, and because of the increasing use of electronic payments, the Commission proposes to revise 11 CFR 102.6(c)(3) to enable contributors to make combined payments to an SSF by credit card or electronic payment, as well as by check. The combined payment would still have to be made from the contributor's personal account, irrespective of whether made by check or electronically, or through a payroll-deduction plan.[95] As proposed, the rule would retain the reference to ''a non-repayable corporate drawing account of the individual,'' because the Commission wants to retain the clarification that such accounts are, for purposes of 11 CFR 102.6(c)(3), ''personal accounts.''

Second, the Commission proposes to revise 11 CFR 114.6(d)(2)(iii), which requires the custodian of an SSF to forward to the SSF funds from certain separate accounts ''by check drawn on'' such accounts. Consistent with the proposed revisions concerning disbursements from campaign depositories, the Commission proposes to revise 11 CFR 114.6(d)(2)(iii) to allow such funds to be forwarded ''by check or similar draft, including electronic transfer.''

d. Electronic Transfers of Earmarked Contributions

The Commission seeks comment on whether it should revise 11 CFR 110.6(c)(1)(v) to address a conduit or intermediary's electronic forwarding of an earmarked contribution. Section 110.6(c)(1)(v) sets forth the mechanisms for reporting two categories of earmarked contributions: those that pass through a conduit or intermediary's account, and those that the conduit or intermediary forwards to a committee ''in the form of a contributor's check or other written instrument'' without first depositing them in the conduit's or intermediary's account. The regulation thus does not currently address earmarked contributions that the conduit or intermediary forwards electronically without those funds first passing through the conduit or intermediary's account. Do such transactions occur? If so, then how should the Commission amend 11 CFR 110.6(c)(1)(v) to address reporting requirements for them?

3. Electronic Contributions to Publicly Funded Committees

The Funding Acts allow public fund matching only for contributions ''made by a written instrument which identifies the person making the contribution by full name and mailing address.'' 26 U.S.C. 9034(a). The Commission proposes to revise 11 CFR 9034.2, which currently defines ''written instrument'' in this context to include contributions by credit and debit card—but not when made over the telephone—to a participant in the primary matching fund program.[96] Section 9034.2(b) allows a political committee to receive matching funds for contributions by credit card made over the internet only if the electronic record of that transaction includes ''the name of the cardholder and the card number, which can be maintained electronically and reproduced in a written form.'' And § 9034.2(c) requires the contribution to also contain the contributor's ''signature,'' which is defined for these purposes to be ''either an actual signature . . . or in the case of such a contribution made over the Internet, the full name and card number of the cardholder who is the donor, entered and transmitted by the cardholder.''

Comments received on the ANPRM urged the Commission to bring the requirement that committees maintain the full card number of contributors in line with payment industry security standards.[97] Payment industry standards limit the storage and retention of payment card information in order to safeguard consumers and the payment system from fraud. Visa, Comment at 2, *sers.fec.gov/fosers/showpdf.htm?docid=297361.* Specifically, entities may not store the three-digit code printed on the back of payment cards and must render unreadable (by truncation, hashing, or encryption) the card number and expiration date where that information is stored.[98]

Because § 9034.2(b) and (c) require publicly funded candidates to retain the card number for each contribution by credit or debit card, some committees have historically viewed these regulations as inconsistent with payment industry security practices and requirements. Accordingly, and in recognition of the security risks that are attendant upon storing credit card numbers, the Commission proposes to revise 11 CFR 9034.2(b) and (c) by removing the requirements that the recipient must retain contributors' debit and credit card numbers to be eligible for matching funds. All of the regulation's other requirements would remain in effect, including the requirements that the recipient collect the full name and mailing address of each contributor and maintain a ''record that can be reproduced on paper'' of each electronic contribution. Would § 9034.2, as revised, provide the necessary level of assurance that a credit or debit card contribution made over the internet is eligible for matching funds?

Should the Commission also revise 11 CFR 9034.2(c)(8)(i), which prohibits public fund matching of credit and debit card contributions ''where the cardholder's name and card number are given . . . only orally''? When § 9034.2(c) was first adopted, the Commission explained the exclusion of credit card ''signatures'' made over the telephone as consistent with the ''written instrument'' limitation on the definition of ''contribution'' in 26 U.S.C. 9034(a).[99] Could an electronic record of a credit or debit card contribution authorized orally—such as an audio recording of the authorization—constitute a ''written instrument'' under the Funding Acts, 26 U.S.C. 9034(a)? *Cf.* Advisory Opinion 2013–12 (Service Employees International Union COPE) (noting that ''a telephone-based authorization system that included computer-based (and retrievable) records'' could ''incorporate[ ] procedural safeguards and recordkeeping mechanisms equivalent to . . . a handwritten signature on a paper document'' (internal quotations omitted)). If so, should the Commission revise 11 CFR 9034.2 to permit public fund matching of these credit and debit card contributions?

Finally, the Commission proposes to revise 11 CFR 9036.2(b)(1)(iii), which requires committees to provide the Commission with a list of contribution ''checks returned unpaid'' (*i.e.,* ''bounced''). The Commission proposes

[95] *See* 11 CFR 102.6(c)(3) (describing combined payments under payroll deduction plan).

[96] *See* 11 CFR 9034.2(c)(8) (permitting matching of credit and debit card contributions by written instrument as set forth in 11 CFR 9034.2(b) and (c), but not credit or debit card contributions made orally).

[97] *See* ActBlue, Comment at 2, *sers.fec.gov/fosers/showpdf.htm?docid=297360;* Perkins Coie, Comment at 2, *sers.fec.gov/fosers/showpdf.htm?docid=297359;* Visa, Comment at 1–3, *sers.fec.gov/fosers/showpdf.htm?docid=297361.*

[98] *Id.* at 2–3; *see also* Michael J. de la Merced, *The Credit Card of Tomorrow: Software, Not Plastic,* N.Y. Times, Apr. 1, 2014, *http://dealbook.nytimes.com/2014/04/01/the-credit-card-of-tomorrow-software-not-plastic* (discussing tokenization and credit card security measures).

[99] *See* Matching Credit Card and Debit Card Contributions in Presidential Campaigns, 64 FR 32394, 32395–96 (June 17, 1999).

to add a parallel provision for the electronic equivalent of bounced checks by requiring committees to provide a list of ''credit or debit card or other electronic payment chargebacks.'' The Commission is not proposing to add a similar provision regarding chargebacks to 11 CFR 9036.1(b)(7), which concerns a committee's initial submission for matching funds, because 11 CFR 9036.1(b)(4) already requires such initial submissions to include validation for each deposited contribution.

The Commission seeks comment on the foregoing proposals to update its public financing regulations to account for electronic transactions.

4. Designation, Redesignation, and Attribution of Contributions

The Commission is proposing to revise several provisions concerning the written designation of contributions for particular elections and the attribution of contributions to particular contributors.

First, the Commission proposes to revise 11 CFR 110.1(b)(4), 110.2(b)(4), and 9003.3(a)(1)(vi), which define when contributions are ''designated in writing.'' Each of these rules now allows a contribution to be designated for a particular election (or account, in the case of 11 CFR 9003.3(a)(1)(vi)) [100] if it is made: (1) By a check, money order, or negotiable instrument which clearly indicates it is made with respect to that election or account; or (2) with an accompanying writing signed by the contributor which clearly indicates it is made with respect to that election or account. To ensure that these regulations apply uniformly to electronic and non-electronic transactions, the Commission proposes to remove the reference to a ''check, money order, or other negotiable instrument'' from 11 CFR 110.1(b)(4)(i), 110.2(b)(4)(i), and 9003.3(a)(1)(vi)(A).

Similarly, the Commission proposes to revise 11 CFR 110.1(k)(1) and 9034.2(c), which govern attribution of joint contributions. Section 110.1(k)(1) provides that any contribution made by more than one person, other than a contribution by a partnership, ''shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing.'' Because many contributions are made electronically rather than ''by check, money order, or other negotiable instrument,'' the Commission proposes to remove that reference to how a contribution is made from 11 CFR 110.1(k)(1). The proposed regulation would require instead that any joint contribution be ''indicated by the signature of each contributor in writing,'' without reference to a particular written instrument.

In the matching-funds context, § 9034.2(c) details the manners in which joint contributions may be attributed, depending on the type of written instrument by which the contribution is made. The Commission proposes to add to this section a provision governing the attribution of matchable contributions made by credit and debit cards. Specifically, proposed § 9034.2(c)(8)(iii) would parallel the joint attribution principles that apply to contributions by check, *see* 11 CFR 9034.2(c)(1)(ii), by providing that, ''to be attributed to more than one person, a signed written statement must accompany the credit or debit card contribution indicating that the contribution was made from each individual's personal funds in the amount so attributed.''

F. Updating Other Technologically Outmoded References

The Commission is proposing to update its regulations to reflect technological advances and to remove certain references to outmoded technologies. These revisions are not intended to affect the substance of any of the revised regulations.

1. Telegrams, Telephones, Typewriters, Audio Tapes, and Facsimiles

Under 11 CFR 104.6, membership organizations and corporations that spend more than $2,000 per election on express advocacy communications to their members or restricted class must file reports with the Commission that identify, among other things, the type of communication, ''such as direct mail, telephone or telegram.'' 11 CFR 104.6(c)(1). The Commission proposes to remove the reference to ''telegram'' in 11 CFR 104.6(c)(1) because telegrams are obsolete and therefore not useful to include in the regulation's illustrative, non-exhaustive list of types of communications.[101]

For the same reason, the Commission also proposes to replace the reference to ''typewriters'' with ''computers'' in 11 CFR 114.9(d) (requiring reimbursement for use of labor organization or corporate facilities in connection with federal elections) and to remove the references to ''typewriters'' (without substituting a new term) in 11 CFR 9004.6(a) (identifying certain expenditures that are qualified campaign expenses) and 9034.6(a) (same). The Commission intends the word ''computer'' in these contexts to include not only PCs, but also tablets, smartphones, and similar devices. The Commission welcomes comment on whether alternative terms may more clearly encompass all of these computing devices.

Similarly, the Commission proposes to add ''internet service'' to five non-exhaustive illustrative lists that currently include ''telephone service'': 11 CFR 106.2(b)(2)(iii)(D) (defining ''overhead expenditures'' to include utilities and ''telephone service base charges''); 11 CFR 9004.6(a) and (b) (describing publicly financed candidates' provision of ''facilities'' to the media, including ''telephone service''); and 11 CFR 9034.6(a) and (b) (same).

Because most recording is now digital rather than on magnetic tape, the Commission proposes to replace all regulatory references to ''tapes,'' as in, for example, ''audio tapes,'' with references to ''recordings'': 11 CFR 200.6(a)(5) (including ''transcripts or audio tapes'' of Commission hearings in administrative record); 11 CFR 9007.7(b)(2) (same); 11 CFR 9038.7(b)(2) (same).

The Commission proposes to revise 11 CFR 108.6(b), which requires state officers to preserve certain reports concerning federal elections, by replacing the phrase ''in facsimile copy by microfilm or otherwise'' with ''by copy.'' The Commission is not, however, currently proposing to remove all references to ''facsimile'' from its regulations. For example, certain uses of ''facsimile'' in the regulations are grounded in the use of the word in FECA, such as the definition of ''mass mailing'' in 11 CFR 100.27, which is drawn from FECA's definition of ''mass mailing'' as including ''a mailing by . . . facsimile.'' 52 U.S.C. 30101(23). The Commission welcomes suggestions regarding whether any technological or conforming revisions are necessary in the definition of ''mass mailing'' in 11 CFR 100.27 or the separate definition of the same term at 11 CFR 106.2(b)(2)(ii).

The regulations use a similar term, ''direct mail,'' in reference to a nominating convention delegate's activity. This term is defined at 11 CFR 110.14(f)(4) to include ''any mailing(s) made from lists that were not developed by the delegate.'' *See also* 11 CFR 110.14(i)(4) (parallel provision for delegate committees). Should the

[100] Section 9003.3(a) concerns contributions to a publicly funded presidential candidate's general election legal and accounting (''GELAC'') account.

[101] *See* Shivam Vij, *India to End State-Run Telegram Service. Stop.*, Christian Sci. Monitor, June 14, 2013, *www.csmonitor.com/World/Asia-South-Central/2013/0614/India-to-send-world-s-last-telegram.-Stop* (describing one person's ''spirited defense of the obsolete technology in the age of the smartphone'').

definitions of ''direct mail'' be revised to explicitly account for electronic mailings or mailing lists?

2. Microfilm and Obsolete Computer References

The Commission proposes to remove most references to ''microfilm,'' ''computer tape,'' ''magnetic tape,'' and similar terms from the regulations because these technologies are, for most purposes, obsolete. These references are largely found in the rules implementing the Funding Acts, FOIA, the Privacy Act, and the Commission's Public Disclosure Division. Specifically, the Commission proposes to make the following revisions, none of which is intended to be substantive:

- Remove the references to ''microform,'' ''computer tape or microfilm,'' ''computerized,'' and ''Computerized Magnetic Media Requirements'' in 11 CFR 4.1(j) (presenting non-exhaustive list of forms of FOIA copies), 4.9(c)(5) (FOIA fees), 9007.1(b)(1) (public finance audits), 9036.2(b)(1)(vi) (public fund submission procedures), and 9038.1(b)(1) (audit procedures);
- replace references to ''machine readable documentation,'' ''magnetic tape or disk,'' ''computer disk,'' ''magnetic tapes or magnetic diskettes,'' and ''computerized magnetic media'' with ''digital storage device'' in 11 CFR 4.1(j) (non-exhaustive list of forms of FOIA copies), 4.9(a)(3) (FOIA fees), 9003.1(b)(4) (public fund eligibility conditions), 9003.6(a) (same), 9033.1(b)(5) (same), 9033.12(a) (same), and 9036.1(b)(2) (same);
- replace references to a ''microfilmed copy'' and ''photocopy'' with ''copy'' in 11 CFR 105.5(a) and (b);
- delete 11 CFR 9003.6(b) and 9033.12(b), which concern the organization of computer information according to technical specifications of a computer system the Commission no longer uses;
- replace ''computers'' with ''computers or other electronic devices'' in 11 CFR 9004.6(a)(1) and 9034.6(a)(1); and
- replace ''either solely in magnetic media from or in both printed and magnetic media forms'' with ''in printed or digital form or a combination of printed and digital forms'' in 11 CFR 9036.2(b)(1)(ii).

The Commission also proposes to revise and simplify the fee structures at 11 CFR 4.9 and 5.6, which concern fees for FOIA and Public Disclosure. Specifically, the Commission proposes to remove 11 CFR 4.9(a)(2) (imposing $25 per hour computer access FOIA fee); revise 11 CFR 4.9(c)(4) and 5.6(a) to reduce the fee for document certification; remove from 11 CFR 4.9(c)(4) and 5.6(a) the fees for ''microfilm reader-printer'' and ''microfilm-paper'' copies, ''reels of microfilm,'' publications, computer tapes and indexes, professional research time, and transcripts;[102] remove the specified staff charges from § 4.9(c)(4) and add a provision to charge the ''direct costs,'' including staff and digital storage devices on which records are produced; remove from 11 CFR 5.6(a) the fees for professional ''research time/photocopying time''; remove 11 CFR 5.6(b), which establishes fees for providing Commission publications; and remove from 11 CFR 5.6(c) the reference to use of a contractor for microfilm and computer tape duplication. The Commission also proposes to make a conforming revision to 11 CFR 112.2(b) by including a reference to the Commission's Web site in conjunction with an existing reference to the Public Disclosure Division. The Commission welcomes comment on the proposed revisions.

The Commission seeks comment on two parallel provisions concerning accommodations for the hearing impaired in television commercials prepared and distributed by publicly financed candidates. The Funding Acts require such candidates to certify that any television advertisement ''contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval.'' 26 U.S.C. 9003(e). Commission regulations implement this requirement essentially verbatim at 11 CFR 9003.1(b)(10) and 9033.1(b)(12). Is there a ''successor technology'' that the Commission should now recognize in these provisions? Are there other technologies that might not apply to traditional broadcast television but are used for cable, satellite, or internet-based television (*e.g.,* Hulu or Netflix)?

Finally, the Commission seeks comment on other regulatory references to specific technologies: ''computer column codes [and] the extent of computer tabulations'' of polling data, 11 CFR 106.4(e)(1); software that is ''provided or approved by the Commission,'' *see* 11 CFR 102.5(a)(3)(ii), 106.7(b), 300.30(c)(3)(ii); and ''programming . . . computers'' to address envelopes or labels, 11 CFR 114.5(k)(2). Are these provisions outdated, such that they should be revised?

3. Web Sites

The Commission is considering whether to revise certain regulatory references to ''Web sites'' to accommodate newer technologies—such as mobile applications (''apps'') on smartphones and tablets, smart TV, interactive gaming dashboards, e-book readers, and wearable network-enabled devices such as smartwatches or headsets—that have taken many of the same roles and characteristics that the Commission previously ascribed to Web sites.

First, the Commission proposes to update the definition of ''public communication'' in 11 CFR 100.26, which currently refers to communications placed for fee on another person's ''Web site.'' [103] When the Commission defined ''public communication'' in 2006 to include paid internet advertisements on Web sites, it analogized such advertisements to the other forms of mass communication enumerated in FECA's definition of ''public communication''—such as television, radio, and newspapers—because ''each lends itself to distribution of content through an entity ordinarily owned or controlled by another person.'' Internet Communications, 71 FR 18589, 18594 (Apr. 12, 2006); 52 U.S.C. 30101(22). The Commission focused on Web sites because that was the predominant means of paid internet advertising in 2006.[104] The proposed revision would update § 100.26 to refer to an ''internet-enabled device or application,'' thereby reflecting subsequent changes in internet technology [105] and rendering

[102] The Commission is not proposing to change regulatory references to microfilm that relate to older Commission records that are unavailable in other forms. *See, e.g.,* 11 CFR 5.6(a)(1) (establishing fee for making paper copies from microfilm).

[103] The definition of ''public communication'' is relevant to the application of certain disclaimer requirements, 11 CFR 110.11(a), coordination rules, 11 CFR 109.21(c), and financing limitations, *e.g.,* 11 CFR 100.24(b)(3), 300.32(a)(1)–(2), 300.71.

[104] Even in the 2006 rulemaking, the Commission stated, albeit in a different context, that the ''terms 'Web site' and 'any Internet or electronic publication' are meant to encompass a wide range of existing and developing technology, such as Web sites, 'podcasts,' etc.'' Internet Communications, 71 FR at 18608 n.52 (citing 2005 testimony enumerating variety of ''Internet communication technologies,'' including instant messaging, ''Internet Relay Chat,'' social networking software, and widgets).

[105] *See* Amy Schatz, *In Hot Pursuit of the Digital Voter,* Wall St. J., Mar. 23, 2012, *www.wsj.com/articles/SB10001424052702303812904577299820064048072* (showing screenshots of 2012 presidential committee advertisements on Hulu and noting another campaign's purchase of advertisements on Pandora internet radio); Tanzina

Continued

the regulatory text more adaptable to the development of as-yet unknown future technologies.

The Commission seeks comment on this proposal. Is there any basis in law or fact to distinguish between paid Web site advertising and other paid internet advertising for purposes of the definition of ''public communication''? Is the term ''internet-enabled device or application'' sufficiently clear and technically accurate, or is there a better way to refer to the various media through which paid internet communications can be sent and received? Would providing examples of such paid media be helpful?

Second, the Commission proposes to update the disclaimer provision in 11 CFR 110.11, which currently refers to political committees' ''Internet Web sites'' that are available to the general public. 11 CFR 110.11(a)(1).[106] When the Commission revised the disclaimer requirements in 2002 to apply to political committees' Web sites, it noted ''the widespread use of this technology in modern campaigning, and the relatively nonintrusive nature of disclaimer requirements.'' Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 FR 76962, 76964 (Dec. 13, 2002). Disclaimers on political committee Web sites, the Commission stated, ''will assure, for example, that a Web site created and paid for by an individual will not have to include a disclaimer'' while the ''use of . . . Web sites to conduct campaign activity will have to provide the public notice of who is responsible.'' *Id.* As noted in the discussion of ''public communication'' above, the Commission used the term ''Web site'' here because that was the predominant means of public ''campaign activity'' on the internet at the time. To update the now-outdated terminology in this provision, the Commission proposes to revise it to refer to political committees' ''Web sites and internet applications.'' The Commission welcomes comment on this proposal, including on whether there are terms other than ''Web sites'' and ''applications'' that may be better able to adapt to changing technological platforms of political committees. Is there a legal or factual basis for distinguishing between political committees' public Web sites and their public apps for purposes of FECA's disclaimer provisions? Do political committees have other devices or platforms for disseminating internet content comparable to Web sites and apps in modern campaigning?

Third, the Commission is proposing to update the definition of ''federal election activity'' to exclude *de minimis* costs incurred by a state, district, or local party committee for certain activities associated with apps. 11 CFR 100.24. Currently, the definition of ''federal election activity'' excludes *de minimis* costs associated with posting certain general voting information on the ''Web site'' of a state, district, or local party committee or association of state or local candidates. 11 CFR 100.24(c)(7)(i) through (iii). When the Commission adopted these exclusions in 2010, it recognized the ''administrative complexities'' that state, district, and local party committees and associations of state and local candidates would face in tracking the ''nominal, incidental'' costs of the enumerated activities. *See* Definition of Federal Election Activity, 75 FR 55257, 55265 (Sept. 10, 2010). The Commission also recognized that many of these activities did not involve any costs and, for those that did, the costs would be ''so small that—even aggregated over a long period of time—they would not result in any meaningful evasion of BCRA's soft money restrictions.'' *Id.* The Commission proposes now to update 11 CFR 100.24(c)(7) by providing that the *de minimis* exception also applies to the same enumerated activities when conducted via internet apps of state, district, and local party committees and associations of state and local candidates. The Commission believes that the reasons for excluding this activity from the definition of federal election activity when conducted on a party committee's Web site—*i.e.,* its *de minimis* incremental cost and the administrative difficulty of determining such cost—apply equally to making the specified information available on a party committee's app. Is there any practical or legal reason to include one in the definition of ''federal election activity'' while excluding the other? Is the proposed revision sufficiently flexible for the *de minimis* exception to be applied to evolving technologies where appropriate without further textual revision?

Finally, the Commission is proposing to revise references to ''World Wide Web site,'' ''Web site'' or ''Web site'' to read ''Web site'' in 11 CFR 4.4(g), 100.29(b)(6)(i) and (ii), 100.73, 100.94(b), 100.132, 102.2(a)(1)(vii), 104.22(b)(2)(i) and (ii), 110.1(c)(1)(iii), 110.2(e)(2), and 110.17(e)(1) and (2); ''Internet Web site'' to read ''Web site'' in 11 CFR 104.22(a)(6)(ii)(A)(2); ''World Wide Web address'' to read ''Web site address'' in 11 CFR 110.11(b)(3); and ''Web address'' and ''Web page'' to read ''Web site address'' and ''Web page'' in 11 CFR 300.2(m)(1)(iii). As with the other terminological updates discussed above, none of these proposed revisions is intended to effect a substantive change in the regulations. Would the proposed revisions modernize the regulatory language in a useful way?

G. Other Electronic Modernization Issues

In addition to inviting comment, including pertinent data, on the issues raised in this document, the Commission welcomes comment and data on any technological modernization issues that are not addressed in this document and that relate to the Commission's regulations implementing FECA, the Funding Acts, or other statutes that the Commission is charged with implementing.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rules would clarify and update existing regulatory language, codify certain existing Commission precedent regarding electronic transactions and communications, and provide political committees and other entities with more flexibility in meeting FECA's recordkeeping and filing requirements. The proposed rules would not impose new recordkeeping, reporting, or financial obligations on political committees or commercial vendors. The Commission therefore certifies that the proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities.

Vega, *The Next Political Battleground: Your Phone,* CNN, May 29, 2015, *www.cnn.com/2015/05/29/politics/2016-presidential-campaigns-mobile-technology* (noting that ''voters should expect more political ads as they scroll through their phones next year—much as they'll be bombarded with ads on television,'' including ads using geolocation to ''target[] potential voters who may have downloaded the candidate's app''). Indeed, a recent study has shown that 19% of Americans access the internet exclusively or mostly through their smartphones as opposed to desktop or laptop computers. *See* Pew Research Ctr., *U.S. Smartphone Use in 2015,* at 3 (2015), *www.pewinternet.org/files/2015/03/PI_Smartphones_0401151.pdf.*

[106] Issues concerning the substantive disclaimer requirements for electronic communications, such as modifications of or exemptions from disclaimer requirements for certain internet communications, are outside the scope of this rulemaking. They may be addressed in a separate rulemaking. *See* Internet Communication Disclaimers, 76 FR 63567; *see also supra* note 40. To review and comment on documents on that subject, visit *http://www.fec.gov/fosers,* reference REG 2011–02.

List of Subjects

11 CFR Part 1

Privacy.

11 CFR Part 2

Sunshine Act.

11 CFR Part 4

Freedom of information.

11 CFR Part 5

Archives and records.

11 CFR Part 6

Civil rights, Individuals with disabilities.

11 CFR Part 7

Administrative practice and procedure, Conflict of interests.

11 CFR Part 100

Elections.

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 103

Banks and banking, Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 105

Campaign funds, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 106

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 108

Elections, Reporting and recordkeeping requirements.

11 CFR Part 109

Coordinated and independent expenditures.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 111

Administrative practice and procedure, Elections, Law enforcement, Penalties.

11 CFR Part 112

Administrative practice and procedure, Elections.

11 CFR Part 114

Business and industry, Elections, Labor.

11 CFR Part 116

Administrative practice and procedure, Business and industry, Credit, Elections, Political candidates, Political committees and parties.

11 CFR Part 200

Administrative practice and procedure.

11 CFR Part 201

Administrative practice and procedure.

11 CFR Part 300

Campaign funds, Nonprofit organizations, Political committees and parties, Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 9002

Campaign funds.

11 CFR Part 9003

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9007

Administrative practice and procedure, Campaign funds.

11 CFR Part 9032

Campaign funds.

11 CFR Part 9033

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9034

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9035

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9038

Administrative practice and procedure, Campaign funds.

11 CFR Part 9039

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend 11 CFR chapter I as follows:

PART 1—PRIVACY ACT

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 552a.

§ 1.3 [Amended]

■ 2. Amend paragraph (b) of § 1.3 by removing ''request assistance by mail or in person from the Chief Privacy Officer, Federal Election Commission, 999 E Street NW., Washington, DC 20463 during the hours of 9 a.m. to 5:30 p.m.'' and adding in its place ''request assistance in person from the Chief Privacy Officer during the hours of 9 a.m. to 5:30 p.m. or file a request for assistance, addressed to the Chief Privacy Officer, pursuant to 11 CFR 100.19(g).''

§ 1.4 [Amended]

■ 3. Amend paragraph (a) of § 1.4 by removing ''made at the Federal Election Commission, 999 E Street NW., Washington, DC 20463 and to the system manager identified in the notice describing the systems of records, either in writing or in person'' and adding in its place ''addressed to the system manager identified in the notice describing the systems of records, either in person or by filing the request pursuant to 11 CFR 100.19(g)''.

PART 2—SUNSHINE REGULATIONS; MEETINGS

■ 4. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 552b.

§ 2.2 [Amended]

■ 5. Amend § 2.2(a) by removing '', 999 E Street NW., Washington, DC 20463''.

PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT

■ 6. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 552, as amended.

§ 4.1 [Amended]

■ 7. Amend § 4.1(j) as follows:
■ a. Remove ''microform,''; and
■ b. Remove ''machine readable documentation (*e.g.,* magnetic tape or disk)'' and add in its place ''digital storage device''.

§ 4.4 [Amended]

■ 8. Amend § 4.4(g) by removing ''World Wide Web site'' and adding in its place ''Web site''.

§ 4.5 [Amended]

■ 9. Amend § 4.5 as follows:

■ a. In paragraph (a)(4)(i), remove ''addressed to the Chief FOIA Officer, Federal Election Commission, 999 E Street NW., Washington, DC 20463, and shall indicate clearly on the envelope'' and add in its place ''addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g), and shall indicate clearly on the envelope or subject line, or in a similarly prominent location,'';
and
■ b. In paragraph (a)(4)(iv), remove ''addressed to the Chief FOIA Officer, Federal Election Commission, 999 E Street NW., Washington, DC 20463'' and add in its place ''addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)''.

§ 4.7 [Amended]

■ 10. Amend paragraph (b)(1) of § 4.7 by removing ''addressed to Chief FOIA Officer, Federal Election Commission, 999 E Street NW., Washington, DC 20463'' and adding in its place ''addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)''.

§ 4.8 [Amended]

■ 11. Amend § 4.8 as follows:
■ a. In paragraph (b), remove ''envelope or other cover and at the top of the first page'' and add in its place ''envelope or subject line, or in a similarly prominent location,''; and
■ b. In paragraph (c), remove ''delivered or addressed to the Chief FOIA Officer, Federal Election Commission, 999 E Street NW., Washington, DC 20463'' and add in its place ''addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)''.
■ 12. Amend § 4.9 as follows:
■ a. Remove paragraph (a)(2);
■ b. Redesignate paragraphs (a)(3) and (4) as paragraphs (a)(2) and (3), respectively;
■ c. In newly redesignated paragraph (a)(2), remove ''computer disks'' and add in its place ''digital storage devices''; and
■ d. Revise paragraphs (c)(4) and (5).

The revisions read as follows:

§ 4.9 Fees.

* * * * *

(c) * * *

(4) For a paper photocopy of a record, the fee will be $.07 per page, which has been calculated to include staff time. For other forms of duplication, including copies produced by computer, the Commission will charge the direct costs, including staff time and the actual cost of any digital storage device provided. The Commission will charge $7.50 for certification of a document. The Commission will not charge a fee for ordinary packaging and mailing of records requested. When a request for special mailing or delivery services is received the Commission will package the records requested. The requestor shall make all arrangements for pick-up and delivery of the requested materials. The requestor shall pay all costs associated with special mailing or delivery services directly to the courier or mail service.

(5) The Commission will advise the requestor of the identity of any private contractor who will perform the duplication services. If fees are charged for such services, they shall be made payable to that private contractor and shall be forwarded to the Commission.

* * * * *

PART 5—ACCESS TO PUBLIC DISCLOSURE DIVISION DOCUMENTS

■ 13. The authority citation for part 5 continues to read as follows:

Authority: 52 U.S.C. 30108(d), 30109(a)(4)(B)(ii), 30111(a); 31 U.S.C. 9701.

§ 5.4 [Amended]

■ 14. Amend § 5.4(a)(5) by removing ''Letter requests'' and adding in its place ''Requests''.

§ 5.5 [Amended]

■ 15. Amend § 5.5 as follows:
■ a. In paragraph (a), remove ''mail'' and add in its place ''filing a request pursuant to 11 CFR 100.19(g)''; and
■ b. In paragraph (c), remove ''addressed to the Chief FOIA Officer, Federal Election Commission, 999 E Street NW., Washington, DC 20463'' and add in its place ''addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)''.
■ 16. Amend § 5.6 as follows:
■ a. Revise paragraph (a);
■ b. Remove paragraph (b);
■ c. Redesignate paragraphs (c) and (d) as paragraphs (b) and (c), respectively; and
■ d. Revise newly redesignated paragraph (b).

The revisions read as follows:

§ 5.6 Fees.

(a) Fees may be charged for copies of records which are furnished to a requester under this part and for the staff time spent in locating and reproducing such records at the rate of $.05 per page for paper copies, including paper copies from microfilm; $4.50 per half hour of staff time after the first half hour; and $7.50 for certification of a document. Such fees shall not exceed the Commission's direct cost of processing requests for those records computed on the basis of the actual number of copies produced and the staff time expended in fulfilling the particular request.

(b) In the event the anticipated fees for all pending requests from the same requester exceed $25.00, records will not be searched, nor copies furnished, until the requester pays, or makes acceptable arrangements to pay, the total amount due. If any fee is not precisely ascertainable, an estimate will be made by the Commission and the requester will be required to forward the fee so estimated. In the event any advance payment differs from the actual fee, an appropriate adjustment will be made at the time the copies are made available by the Commission.

* * * * *

PART 6—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL ELECTION COMMISSION

■ 17. The authority citation for part 6 continues to read as follows:

Authority: 29 U.S.C. 794.

§ 6.103 [Amended]

■ 18. Amend § 6.103(b) by removing '', 999 E Street NW., Washington, DC 20463''.

§ 6.170 [Amended]

■ 19. Amend § 6.170 as follows:
■ a. In paragraph (d)(3), remove ''filed under this part shall be addressed to the Rehabilitation Act Officer, 999 E Street NW., Washington, DC 20463'' and add in its place ''under this part shall be addressed to the Rehabilitation Act Officer and filed pursuant to 11 CFR 100.19(g)'';
■ b. In paragraph (g), remove ''in a letter containing'' and add in its place ''in writing. This notification will contain'';
■ c. In paragraph (h), remove ''letter'' and add in its place ''notification''; and
■ d. In paragraph (i), remove '', Federal Election Commission, 999 E Street, NW., Washington, DC 20463'' and add in its place ''and filed pursuant to 11 CFR 100.19(g)''.

PART 7—STANDARDS OF CONDUCT

■ 20. The authority citation for part 7 continues to read as follows:

Authority: 52 U.S.C. 30106, 30107, and 30111; 5 U.S.C. 7321 *et seq.* and app. 3.

§ 7.2 [Amended]

■ 21. Amend § 7.2(a) by removing '', 999 E Street NW., Washington, DC 20463''.

PART 100—SCOPE AND DEFINITIONS (52 U.S.C. 30101)

■ 22. The authority citation for part 100 continues to read as follows:

Authority: 52 U.S.C. 30101, 30104, 30111(a)(8), and 30114(c).

§ 100.3 [Amended]

■ 23. Amend § 100.3(a)(3) by removing ''by letter'' and adding in its place ''in writing''.

§ 100.9 [Amended]

■ 24. Amend § 100.9 by removing '', 999 E Street NW., Washington, DC 20463''.

■ 25. In § 100.19, revise the introductory paragraph and add paragraph (g) to read as follows:

§ 100.19 File, filed, or filing (52 U.S.C. 30104(a)).

With respect to documents required to be filed with the Commission or the Secretary of the Senate under 11 CFR parts 101, 102, 104, 105, 107, 108, and 109, and any modifications or amendments thereto, the terms file, filed, and filing mean one of the actions set forth in paragraphs (a) through (f) of this section. With respect to documents to be filed with the Commission under any other provision of 11 CFR, the terms file, filed, and filing mean one of the actions set forth in paragraph (g) of this section. For purposes of this section, document means any report, statement, notice, designation, request, petition, or other writing to be filed with the Commission or the Secretary of the Senate.

* * * * *

(g) A document may be filed in person or by mail, including priority mail or express mail, or overnight delivery service, with the Federal Election Commission, 999 E Street NW., Washington, DC 20463, or by any alternative means, including electronic, that the Commission may prescribe.

§ 100.24 [Amended]

■ 26. Amend § 100.24 as follows:

■ a. In paragraph (c)(7)(i), by removing ''Web site'' and ''web page'' and adding in their places, ''website or internet application'' wherever they appear; and

■ b. In paragraphs (c)(7)(ii) and (iii), by removing ''Web site'' and adding in its place ''website or internet application'' wherever it appears.

§ 100.26 [Amended]

■ 27. Amend § 100.26 by removing ''Web site'' and adding in its place ''website or internet-enabled device or application''.

§ 100.29 [Amended]

■ 28. Amend § 100.29 as follows:

■ a. In paragraphs (b)(6)(i) and (ii), remove ''Web site'' and add in its place ''website'' wherever it appears; and

■ b. In paragraph (b)(6)(ii)(A), remove ''written documentation'' and add in its place ''a writing''.

■ 29. Add § 100.34 to subpart A to read as follows:

§ 100.34 Record.

(a) A *record* is information that is inscribed on a tangible medium or that is stored in an electronic or other medium from which the information can be retrieved and reviewed in visual or aural form.

(b) Any person who provides to the Commission a record stored in an electronic or other non-tangible medium shall, upon request of the Commission, provide at no cost to the Commission any equipment and software necessary to enable the Commission to retrieve and review the information in the record. The Commission may request such equipment and software when the Commission cannot retrieve and review the information using the Commission's existing equipment and software.

■ 30. Add § 100.35 to subpart A to read as follows:

§ 100.35 Writing, written.

Written, in writing, or *a writing* means consisting of letters, words, numbers, or their equivalent set down in any medium or form, including paper, email or other electronic message, computer file, or digital storage device.

■ 31. Add § 100.36 to subpart A to read as follows:

§ 100.36 Signature, electronic signature.

(a) A *signature* is an individual's name or mark on a writing or record that identifies the individual and authenticates the writing or record. A *signature* includes an *electronic signature,* unless otherwise specified.

(b) An *electronic signature* is an electronic word, image, symbol, or process that an individual attaches to or associates with a writing or record to identify the individual and authenticate the writing or record. Examples of electronic signatures include a digital image of a handwritten signature, or a secure, digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender.

(c) A writing or record may be sworn, made under oath, or otherwise certified or verified under penalty of perjury, by electronic signature. A writing or record may be notarized electronically pursuant to applicable State law.

§ 100.73 [Amended]

■ 32. Amend the introductory text of § 100.73 by removing ''Web site'' and adding in its place ''website''.

§ 100.82 [Amended]

■ 33. Amend § 100.82(e)(1)(i) and (e)(2)(ii) by removing ''documentation'' and adding in its place ''records'' wherever it appears.

§ 100.93 [Amended]

■ 34. Amend the introductory text of § 100.93(j)(1), (2), and (3) by removing ''documentation'' and adding in its place ''a record'' wherever it appears.

§ 100.94 [Amended]

■ 35. Amend § 100.94(b) by removing ''Web site'' and adding in its place ''website'' wherever it appears.

§ 100.132 [Amended]

■ 36. Amend the introductory text of § 100.132 by removing ''Web site'' and adding in its place ''website''.

§ 100.142 [Amended]

■ 37. Amend § 100.142(e)(1)(i) and (e)(2)(ii) by removing ''documentation'' and adding in its place ''records'' wherever it appears.

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (52 U.S.C. 30103)

■ 38. The authority citation for part 102 continues to read as follows:

Authority: 52 U.S.C. 30102, 30103, 30104(a)(11), 30111(a)(8), and 30120.

§ 102.2 [Amended]

■ 39. Amend § 102.2 as follows:

■ a. In the introductory text to paragraph (a)(1), remove '', 999 E Street NW., Washington, DC 20463''; and

■ b. In paragraph (a)(1)(vii), remove ''web site'' and add in its place ''website''.

■ 40. Amend § 102.6 as follows:

■ a. In the introductory text of paragraph (c)(2), remove ''fund in a bill'' and add in its place ''fund with a bill''; and

■ b. Revise paragraph (c)(3).

The revision reads as follows:

§ 102.6 Transfers of funds; collecting agents.

* * * * *

(c) * * *

(3) *Combining contributions with other payments.* A contributor may write a check or authorize a credit card or electronic payment that represents both a contribution and payment of dues or other fees. The combined payment must be made from the contributor's personal account or on a non-repayable corporate drawing account of the individual contributor. Under a payroll deduction plan, an employer may make a payment on behalf of its employees to a union or its agent that represents a combined payment of voluntary contributions to

the union's separate segregated fund and union dues or other employee deductions.

* * * * *

■ 41. In § 102.8, revise the last sentence of paragraph (a), revise the last sentence of paragraph (b)(2), and add paragraph (d) to read as follows:

§ 102.8 Receipt of contributions (52 U.S.C. 30102(b)).

(a) * * * Date of receipt shall be the date such person obtains possession of the contribution or, for a contribution made in an electronic transaction in which the receipt of authorization precedes the receipt of funds, obtains the contributor's authorization of the transaction.

(b) * * *

(2) * * * Date of receipt shall be the date such person obtains possession of the contribution or, for a contribution made in an electronic transaction in which the receipt of authorization precedes the receipt of funds, obtains the contributor's authorization of the transaction.

* * * * *

(d) Every person whose usual and normal business involves the processing and transmission of payments and who processes a contribution to a political committee in the ordinary course of its business will satisfy the requirements of paragraphs (a) and (b) of this section if such person transmits funds and contributor information to the recipient political committee within the time periods prescribed in paragraphs (a) and (b) of this section for forwarding contributions.

■ 42. Amend § 102.9 as follows:

■ a. Revise paragraph (a)(4);

■ b. In the introductory text of paragraph (b)(2) and paragraphs (b)(2)(i)(B) and (b)(2)(ii), remove ''cancelled check'' and add in its place ''canceled check or record of electronic transfer'';

■ c. In paragraph (b)(2)(i)(B), remove ''documentation'' and add in its place ''record'';

■ d. In paragraph (b)(2)(ii), remove ''documentation'' and add in its place ''a record'';

■ f. Remove paragraph (b)(2)(iii); and

■ g. Revise paragraph (f).

The revisions read as follows:

§ 102.9 Accounting for contributions and expenditures (52 U.S.C. 30102(c)).

* * * * *

(a) * * *

(4) In addition to the account to be kept under paragraph (a)(1) of this section, for contributions in excess of $50, the treasurer of a political committee or an agent authorized by the treasurer shall maintain a record of each contribution received. A record of a contribution by check or written instrument must contain an image of that instrument. A record of the receipt of a contribution must include sufficient information to associate that contribution with its deposit in the political committee's campaign depository, such as, for example, a batch number.

* * * * *

(f) The treasurer shall maintain the records required by 11 CFR 110.1(l), concerning designations, redesignations, reattributions, and the dates of contributions. If the treasurer does not maintain these records, 11 CFR 110.1(l)(5) shall apply.

§ 102.10 [Amended]

■ 43. Amend § 102.10 by removing ''check or similar draft drawn on'' and adding in its place ''check or similar draft, including electronic transfer, from''.

§ 102.11 [Amended]

■ 44. Amend § 102.11 by removing ''journal'' and add in its place ''record'' wherever it appears.

PART 103—CAMPAIGN DEPOSITORIES (52 U.S.C. 30102(H))

■ 45. The authority citation for part 103 continues to read as follows:

Authority: 52 U.S.C. 30102(h), 30111(a)(8).

■ 46. Revise § 103.3(a) to read as follows:

§ 103.3 Deposit of receipts and disbursements (52 U.S.C. 30102(h)(1)).

(a)(1) All receipts by a political committee shall be deposited in account(s) established pursuant to 11 CFR 103.2, except that any contribution may be, within 10 days of the treasurer's receipt, returned to the contributor without being deposited. The treasurer of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt. Contributions deposited in the merchant account of a person described in 11 CFR 102.8(d) in the ordinary course of that person's business are not receipts by the committee, but are, instead, contributions to be forwarded by that person under 11 CFR 102.8.

(2) A committee shall make all disbursements by check or similar draft, including electronic transfer, from an account at its designated campaign depository, except for expenditures of $100 or less made from a petty cash fund maintained pursuant to 11 CFR 102.11. Funds may be transferred from the depository for investment purposes, but shall be returned to the depository before such funds are used to make expenditures.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52 U.S.C. 30104)

■ 47. The authority citation for part 104 continues to read as follows:

Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(i), 30104, 30111(a)(8) and (b), 30114, 30116, 36 U.S.C. 510.

§ 104.4 [Amended]

■ 48. Amend § 104.4(d)(2) by removing ''typing the treasurer's name'' and adding in its place ''electronic signature''.

§ 104.6 [Amended]

■ 49. Amend § 104.6(c)(1) by removing '', telephone or telegram'' and adding in its place ''or telephone''.

§ 104.10 [Amended]

■ 50. Amend § 104.10(a)(4) and (b)(5) by removing ''documents'' and adding in its place ''records''.

§ 104.14 [Amended]

■ 51. Amend § 104.14 as follows:

■ a. In paragraph (b)(4)(iv), remove ''documentation'' and add in its place ''records''; and

■ b. In paragraph (b)(4)(v), remove ''Documentation for'' and add in its place ''Records of''.

§ 104.17 [Amended]

■ 52. Amend § 104.17(a)(4) and (b)(4) by removing ''documents'' and adding in its place ''records'' wherever it appears.

§ 104.22 [Amended]

■ 53. Amend § 104.22 as follows:

■ a. In paragraph (a)(6)(ii)(A)(2), remove ''Internet Web site'' and add in its place ''website'';

■ b. In paragraphs (b)(2)(i) and (ii), remove ''Web sites'' and add in its place ''websites'' wherever it appears; and

■ c. In paragraph (b)(2)(ii), remove ''Web site'' and add in its place ''website'' wherever it appears.

PART 105—DOCUMENT FILING (52 U.S.C. 30102(G))

■ 54. The authority citation for part 105 continues to read as follows:

Authority: 52 U.S.C. 30102(g), 30104, 30111(a)(8).

§ 105.5 [Amended]

■ 55. Amend § 105.5 as follows:

■ a. Remove ''microfilm copies and photocopies'' from the section heading and add in its place ''copies'';

■ b. In paragraph (a), remove ''Either a microfilmed copy or photocopy'' and add in its place ''A copy''; and
■ c. In paragraph (b), remove ''microfilm copy and a photocopy'' and add in its place ''copy''.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

■ 56. The authority citation for part 106 continues to read as follows:

Authority: 52 U.S.C. 30111(a)(8), 30116(b), 30116(g).

§ 106.2 [Amended]

■ 57. Amend § 106.2 as follows:
■ a. In paragraphs (a)(1), (b)(2)(ii), and (b)(2)(v), remove ''documentation'' and add in its place ''records''; and
■ b. In paragraph (b)(2)(iii)(D), remove ''supplies, and telephone'' and add in its place ''supplies, internet service, and telephone''.

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (52 U.S.C. 30113)

■ 58. The authority citation for part 108 continues to read as follows:

Authority: 52 U.S.C. 30104(a)(2), 30111(a)(8), 30113, 30143.

§ 108.6 [Amended]

■ 59. In § 108.6(b), remove ''in facsimile copy by microfilm or otherwise'' and add in its place ''by copy''.

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (52 U.S.C. 30101(17), 30116(A) AND (D), AND PUBLIC LAW 107–155 SEC. 214(C))

■ 60. The authority citation for part 109 continues to read as follows:

Authority: 52 U.S.C. 30101(17), 30104(c), 30111(a)(8), 30116, 30120; Sec. 214(c), Public Law 107–155, 116 Stat. 81.

§ 109.10 [Amended]

■ 61. In § 109.10(e)(2)(ii), remove ''typing the treasurer's name'' and add in its place ''electronic signature''.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 62. The authority citation for part 110 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102(c)(2), 30104(i)(3), 30111(a)(8), 30116, 30118, 30120, 30121, 30122, 30123, 30124, and 36 U.S.C. 510.

■ 63. Amend § 110.1 as follows:
■ a. In paragraph (b)(3)(i)(A), remove ''using a committee check or draft'' and add in its place ''using a committee check or similar draft, including electronic transfer'';
■ b. In paragraph (b)(4)(i), remove ''is made by check, money order, or other negotiable instrument which'';
■ c. In paragraph (b)(5)(ii)(B)(6), remove ''including electronic mail'';
■ d. In paragraph (b)(5)(ii)(C)(7), remove '', including electronic mail'';
■ e. In paragraph (b)(6), add a fifth sentence after ''11 CFR 110.1(l)(4).'';
■ f. In paragraph (c)(1)(iii), remove ''Web site'' and add, in its place, ''website'';
■ g. In paragraph (k)(1), remove ''include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing'' and add in its place ''be indicated by the signature of each contributor in writing'';
■ h. In paragraph (k)(3)(ii)(B)(3), remove ''including electronic mail'';
■ i. In paragraph (l)(1), remove ''copy'' and ''full-size photocopy of the check or written instrument'' and add in their places ''record'' and ''record that contains a complete image of that instrument'', respectively;
■ j. In paragraph (l)(4)(i), remove ''copy'' and add in its place ''record'';
■ k. In paragraph (l)(4)(ii), remove ''full-size photocopy of'' and add in its place ''record that contains a complete image of''; and
■ l. In paragraph (l)(6), remove ''documentation'' and add in its place ''a record'' wherever it appears.

The addition reads as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (52 U.S.C. 30116(a)(1)).

* * * * *

(b) * * *

(6) * * * A contribution made in an electronic transaction is considered to be made when the contributor authorizes the transaction. * * *

* * * * *

■ 64. Amend § 110.2 as follows:
■ a. In paragraph (b)(4)(i), remove ''is made by check, money order, or other negotiable instrument which'';
■ b. In paragraph (b)(6), add a fifth sentence after ''11 CFR 110.1(l)(4).''; and
■ c. In paragraph (e)(2), remove ''Web site'' and add in its place ''website''.

The addition reads as follows:

§ 110.2 Contributions by multicandidate political committees (52 U.S.C. 30116(a)(2)).

* * * * *

(b) * * *

(6) * * * A contribution made in an electronic transaction is considered to be made when the contributor authorizes the transaction. * * *

* * * * *

■ 65. Amend § 110.4 as follows:
■ a. In paragraph (c)(1), remove ''make contributions to a candidate or political committee of currency of the United States, or of any foreign country'' and add in its place ''make cash contributions to a candidate or political committee''; and
■ b. Add paragraph (c)(4).

The addition reads as follows:

§ 110.4 Contributions in the name of another; cash contributions (52 U.S.C. 30122, 30123, 30102(c)(2)).

* * * * *

(c) * * *

(4) For purposes of this section, a *cash contribution* includes a contribution of currency of the United States or of any foreign country, and a contribution made by prepaid card.

■ 66. Amend § 110.6 as follows:
■ a. In paragraph (b)(2)(i)(D), remove ''and'';
■ b. In paragraph (b)(2)(i)(E), remove ''contributions.'' and add in its place ''contributions; and'';
■ c. Add paragraph (b)(2)(i)(F);
■ d. In paragraph (c)(1)(ii), remove ''by letter'' and add in its place ''the report shall be provided in writing'';
■ e. In paragraph (c)(1)(iv)(C), remove ''cash or by the contributor's check or by the conduit's check'' and add in its place ''cash, by the contributor's check, by the conduit's check, or by electronic transfer''; and
■ f. In paragraph (c)(1)(v), remove ''by letter'' and add in its place ''in writing''.

The addition reads as follows:

Alternative A

§ 110.6 Earmarked contributions (52 U.S.C. 30116(a)(8)).

* * * * *

(b) * * *

(2) * * *

(i) * * *

(F) A commercial payment processor, which is any person whose usual and normal business is to process payments and who processes payments to candidates and authorized committees in the ordinary course of business without exercising direction or control over the choice of the recipient candidate or authorized committee.

* * * * *

Alternative B

§ 110.6 Earmarked contributions (52 U.S.C. 30116(a)(8)).

* * * * *

(b) * * *

(2) * * *

(i) * * *

(F) A commercial payment processor, which is any person whose usual and

normal business is to process payments and who processes payments to candidates and authorized committees in the ordinary course of business.

* * * * *

§ 110.11 [Amended]

■ 67. Amend § 110.11 as follows:

■ a. In paragraph (a)(1), remove ''Internet websites'' and add in its place ''websites and internet applications''; and

■ b. In paragraph (b)(3), remove ''World Wide Web address'' and add in its place ''website address''.

§ 110.17 [Amended]

■ 68. Amend § 110.17(e)(1) and (2) by removing ''Web site'' and adding in its place ''website'' wherever it appears.

PART 111—COMPLIANCE PROCEDURE (52 U.S.C. 30109, 30107(A))

■ 69. The authority citation for part 111 continues to read as follows:

Authority: 52 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 note; 31 U.S.C. 3701, 3711, 3716–3719, and 3720A, as amended; 31 CFR parts 285 and 900–904.

§ 111.4 [Amended]

■ 70. Amend § 111.4 as follows:

■ a. In paragraph (a), remove ''to the General Counsel, Federal Election Commission, 999 E Street NW., Washington, DC 20463'' and add in its place ''addressed to the General Counsel'';

■ b. In paragraph (a), remove ''three (3) copies'' and add in its place ''three (3) copies of any complaint not filed electronically''; and

■ c. In paragraph (d)(4), remove ''documentation supporting the facts alleged if such documentation is'' and add in its place ''records supporting the facts alleged if such records are''.

§ 111.5 [Amended]

■ 71. Amend § 111.5 as follows:

■ a. In paragraph (a), remove ''enclose'' and add in its place ''provide''; and

■ b. In paragraph (b), remove ''enclosed'' and add in its place ''provided''.

§ 111.6 [Amended]

■ 72. Amend § 111.6(a) by removing ''a letter or memorandum'' and adding in its place ''a written response''.

§ 111.9 [Amended]

■ 73. Amend § 111.9(a) and (b) by removing ''by letter'' and adding in its place ''in writing'' wherever it appears.

§ 111.12 [Amended]

■ 74. Amend § 111.12 as follows:

■ a. In paragraph (a), remove ''documentary or other tangible'' and add in its place ''records or other''; and

■ b. In paragraph (b), remove ''documents'' and add in its place ''records''.

§ 111.13 [Amended]

■ 75. Amend § 111.13(c) and (d) by removing ''method whereby'' and adding in its place ''method, including electronically, whereby'' wherever it appears.

§ 111.15 [Amended]

■ 76. Amend § 111.15 as follows:

■ a. In paragraph (a), remove '', Federal Election Commission, 999 E Street NW., Washington, DC 20463. If possible, three (3) copies should be submitted''; and

■ b. In paragraph (c), remove ''documents'' and add in its place ''records''.

■ 77. Amend § 111.16 as follows:

■ a. In paragraph (b), remove ''enclose'' and add in its place ''provide'';

■ b. Revise paragraph (c).

The revision reads as follows:

§ 111.16 The probable cause to believe recommendation; briefing procedures (52 U.S.C. 30109 (a)(3)).

* * * * *

(c) Within fifteen (15) days from receipt of the General Counsel's brief, respondent may file a brief with the Commission Secretary, setting forth respondent's position on the factual and legal issues of the case.

* * * * *

§ 111.17 [Amended]

■ 78. Amend § 111.17(a) and (b) by removing ''by letter'' and adding in its place ''in writing'' wherever it appears.

§ 111.18 [Amended]

■ 79. Amend § 111.18(d) by removing ''by letter'' and adding in its place ''in writing''.

§ 111.23 [Amended]

■ 80. Amend § 111.23 as follows:

■ a. In the introductory text to paragraph (a), remove ''so advise the Commission by sending a letter of representation signed by the respondent, which letter shall state the following'' and add in its place ''give the Commission a written notice of representation signed by the respondent, which shall include'';

■ b. In paragraph (a)(1), remove ''address'' and add in its place ''address, email address''; and

■ c. In paragraph (b), remove ''a letter of representation'' and add in its place ''this notice''.

§ 111.35 [Amended]

■ 81. Amend § 111.35(e) by removing ''documentation'' and adding in its place ''records''.

§ 111.36 [Amended]

■ 82. Amend § 111.36 as follows:

■ a. In paragraph (b), remove ''documentation'' and add in its place ''records'' wherever it appears;

■ b. In paragraphs (c) and (d), remove ''documents'' and add in its place ''records'' wherever it appears; and

■ c. In paragraph (d), remove ''document(s)'' and add in its place ''records''.

■ d. In paragraph (e), remove ''documents'' and add in its place ''records''.

§ 111.37 [Amended]

■ 83. Amend § 111.37(a) and (b) by removing ''by letter'' and adding in its place ''in writing'' wherever it appears.

§ 111.40 [Amended]

■ 84. Amend § 111.40(a) by removing ''by letter'' and adding in its place ''in writing''.

PART 112—ADVISORY OPINIONS (52 U.S.C. 30108)

■ 85. The authority citation for part 112 continues to read as follows:

Authority: 52 U.S.C. 30108, 30111(a)(8).

§ 112.1 [Amended]

■ 86. Amend § 112.1(e) by removing ''sent to the Federal Election Commission, Office of General Counsel, 999 E Street NW., Washington, DC 20463'' and adding in its place ''addressed to the Office of General Counsel and filed with the Commission''.

§ 112.2 [Amended]

■ 87. Amend § 112.2(b) by removing ''and purchase at the Public Disclosure Division of the Commission'' and adding in its place ''at the Public Disclosure Division of the Commission and on the Commission's Web site''.

§ 112.3 [Amended]

■ 88. Amend § 112.3(d) by removing ''sent to the Federal Election Commission, Office of General Counsel, 999 E Street NW., Washington, DC 20463'' and adding in its place ''filed with the Office of General Counsel''.

§ 112.4 [Amended]

■ 89. Amend § 112.4(g) by removing ''sent by mail, or personally delivered'' and adding in its place ''be provided''.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

■ 90. The authority citation for part 114 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102, 30104, 30107(a)(8), 30111(a)(8), 30118.

§ 114.1 [Amended]

■ 91. Amend § 114.1(g) by removing ''mailings, oral requests'' and adding in its place ''mailings, emails, oral requests''.

§ 114.6 [Amended]

■ 92. Amend § 114.6(d)(2)(iii) by removing ''check drawn on that account'' and adding in its place ''check or similar draft, including electronic transfer''.

§ 114.8 [Amended]

■ 93. Amend § 114.8 as follows:

■ a. In paragraphs (d)(2) and (3), remove ''copy'' and add in its place ''record''; and

■ b. In paragraph (d)(3), remove ''mailing'' and add in its place ''solicitation''.

§ 114.9 [Amended]

■ 94. Amend § 114.9(d) by removing ''typewriters'' and adding in its place ''computers''.

PART 116—DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES

■ 95. The authority citation for part 116 continues to read as follows:

Authority: 52 U.S.C. 30103(d), 30104(b)(8), 30111(a)(8), 30116, 30118, and 30141.

§ 116.8 [Amended]

■ 96. Amend § 116.8 as follows:

■ a. In the introductory text of paragraph (b), remove ''by letter'' and add in its place ''in writing''; and

■ b. In the introductory text of paragraph (b), remove ''The letter'' and add in its place ''The notification'' wherever it appears.

§ 116.9 [Amended]

■ 97. Amend § 116.9(a)(2) by removing ''current address and telephone number, and has attempted to contact the creditor by registered or certified mail, and either in person or by telephone'' and adding in its place ''current address, telephone number, and email address, and has attempted to contact the creditor by registered or certified mail, and either in person, by telephone, or by email''.

PART 200—PETITIONS FOR RULEMAKING

■ 98. The authority citation for part 200 is amended to read as follows:

Authority: 52 U.S.C. 30107(a)(8), 30111(a)(8); 5 U.S.C. 553(e).

§ 200.2 [Amended]

■ 99. Amend § 200.2(b)(5) by removing ''addressed and submitted to the Federal Election Commission, Office of General Counsel, 999 E Street NW., Washington, DC 20463'' and adding in its place ''addressed to the Office of General Counsel and filed pursuant to 11 CFR 100.19(g)''.

§ 200.3 [Amended]

■ 100. Amend § 200.3 as follows:

■ a. In paragraph (a)(2), remove ''Send a letter to the Commissioner of Internal Revenue, pursuant to 52 U.S.C. 30111(f), seeking the IRS's'' and add in its place ''Pursuant to 52 U.S.C. 30111(f), seek the Internal Revenue Service's''; and

■ b. In paragraph (a)(3), remove ''Send a letter to'' and add in its place ''Notify''.

§ 200.4 [Amended]

■ 101. Amend § 200.4(b) by removing ''sending a letter to'' and adding in its place ''notifying''.

§ 200.6 [Amended]

■ 102. Amend § 200.6(a)(5) by removing ''audio tapes'' and adding in its place ''audio recordings''.

PART 201—EX PARTE COMMUNICATIONS

■ 103. The authority citation for part 201 continues to read as follows:

Authority: 52 U.S.C. 30107(a)(8), 30108, 30111(a)(8), and 30111(b); 26 U.S.C. 9007, 9008, 9009(b), 9038, and 9039(b).

§ 201.3 [Amended]

■ 104. Amend § 201.3 as follows:

■ a. In paragraph (b)(1), remove ''the letter'' and add in its place ''the agreement'' wherever it appears; and

■ b. In paragraph (b)(2)(i), remove ''letter'' and add in its place ''notification''.

PART 300—NON-FEDERAL FUNDS

■ 105. The authority citation for part 300 continues to read as follows:

Authority: 52 U.S.C. 30104(e), 30111(a)(8), 30116(a), 30125, and 30143.

§ 300.2 [Amended]

■ 106. Amend § 300.2 as follows:

■ a. In paragraph (m)(1)(iii), remove ''Web address'' and add in its place ''Web site address''; and

■ b. In paragraph (m)(1)(iii), remove ''Web page'' and add in its place ''Web page''.

§ 300.64 [Amended]

■ 107. Amend § 300.64 as follows:

■ a. In paragraphs (c)(3)(ii) and (iii), remove ''written'' and add in its place ''printed'' wherever it appears;

■ b. In paragraph (c)(3)(iii), remove ''non-written'' and add in its place ''non-printed''; and

■ c. In paragraph (c)(3)(v), remove all references to ''written''.

PART 9002—DEFINITIONS

■ 108. The authority citation for part 9002 continues to read as follows:

Authority: 26 U.S.C. 9002 and 9009(b).

§ 9002.3 [Amended]

■ 109. Amend § 9002.3 by removing '', 999 E Street NW., Washington, DC 20463''.

PART 9003—ELIGIBILITY FOR PAYMENTS

■ 110. The authority citation for part 9003 continues to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

§ 9003.1 [Amended]

■ 111. Amend § 9003.1 as follows:

■ a. In paragraph (a)(1), remove ''letter'' and add in its place ''writing'';

■ b. In paragraph (a)(2), remove ''letter'' and add in its place ''agreement'' wherever it appears;

■ c. In paragraphs (b)(2) and (3), remove ''documentation'' and add in its place ''record'' wherever it appears;

■ d. In paragraph (b)(4), remove ''computerized magnetic media, such as magnetic tapes or magnetic diskettes'' and add in its place ''digital storage devices'';

■ e. In paragraphs (b)(4) and (5), remove ''documentation'' and add in its place ''records'' wherever it appears; and

■ f. In paragraph (b)(7), remove ''name and mailing address'' and add in its place ''name, email address, and mailing address''.

■ 112. Revise § 9003.2(d) to read as follows:

§ 9003.2 Candidate certifications.

* * * * *

(d) *Form.* Major party candidates shall sign and submit the certifications required under 11 CFR 9003.2 within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such certification within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more States pursuant to 11 CFR

9002.2(a)(2). The Commission, upon written request by a minor or new party candidate made at any time prior to the date of the general election, may extend the deadline for filing such certification, except that the deadline shall be a date prior to the day of the general election.

§ 9003.3 [Amended]

■ 113. Amend § 9003.3(a)(1)(vi)(A) by removing ''is made by check, money order, or other negotiable instrument which''.

■ 114. Amend § 9003.5 as follows:

■ a. Revise the section heading;

■ b. Revise the paragraph heading of paragraph (b);

■ c. In paragraphs (b)(1) and (b)(2)(ii), remove ''canceled check negotiated by the payee'' and add in its place ''canceled check negotiated by the payee or a record of electronic transfer to the payee'' wherever it appears;

■ d. In paragraphs (b)(1)(ii)(A) and (B), remove ''documents'' and add in its place ''records'' wherever it appears;

■ e. In paragraph (b)(1)(iii), remove ''documentation'' and add in its place ''record'';

■ f. In paragraphs (b)(1)(iv), (b)(4), and (c), remove ''documentation'' and add in its place ''records'' wherever it appears; and

■ g. In paragraph (b)(1)(iv), remove ''canceled check negotiated by the payee'' and add in its place ''canceled check negotiated by the payee or the record of electronic transfer to the payee''.

The revisions read as follows:

§ 9003.5 Records of disbursements.

* * * * *

(b) *Records required.* * * *

* * * * *

§ 9003.6 [Amended]

■ 115. Amend § 9003.6 as follows:

■ a. In paragraph (a), remove ''computerized magnetic media, such as magnetic tapes or magnetic diskettes'' and add in its place ''digital storage devices'';

■ b. Remove paragraph (b) and redesignate paragraph (c) as paragraph (b); and

■ c. In newly redesignated paragraph (b), remove ''documentation'' and add in its place ''records''.

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

■ 116. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

§ 9004.6 [Amended]

■ 117. Amend § 9004.6 as follows:

■ a. In paragraph (a)(1), remove ''telephone service, typewriters, and computers'' and add in its place ''telephone and internet service, and computers or other electronic devices''; and

■ b. In paragraph (b)(3), remove ''telephone service'' and add in its place ''telephone and internet service''.

§ 9004.7 [Amended]

■ 118. Amend § 9004.7(b)(5)(iv) and (v) by removing ''documentation'' and adding in its place ''records'' wherever it appears.

§ 9004.9 [Amended]

■ 119. Amend § 9004.9(d)(1)(i) and (e) by removing ''documentation'' and adding in its place ''records'' wherever it appears.

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

■ 120. The authority citation for part 9007 continues to read as follows:

Authority: 26 U.S.C. 9007 and 9009(b).

§ 9007.1 [Amended]

■ 121. Amend § 9007.1 as follows:

■ a. In paragraph (b)(1), remove ''the Commission may request additional or updated computerized information'' and add in its place ''the Commission may request additional or updated information''; and

■ b. In paragraphs (b)(1)(iv) and (c)(2), remove ''documentation'' and add in its place ''records'' wherever it appears.

§ 9007.7 [Amended]

■ 122. Amend § 9007.7 as follows:

■ a. In paragraph (a), remove ''documents'' and add in its place ''documents, records,'' wherever it appears; and

■ b. In paragraph (b)(2), remove ''tapes'' and add in its place ''recordings'' wherever it appears.

PART 9032—DEFINITIONS

■ 123. The authority citation for part 9032 continues to read as follows:

Authority: 26 U.S.C. 9032 and 9039(b).

§ 9032.2 [Amended]

■ 124. Amend § 9032.2(d) by removing ''by letter'' and adding in its place ''in writing''.

§ 9032.3 [Amended]

■ 125. Amend § 9032.3 by removing '', 999 E Street NW., Washington, DC 20463''.

PART 9033—ELIGIBILITY FOR PAYMENTS

■ 126. The authority citation for part 9033 continues to read as follows:

Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

■ 127. Amend § 9033.1 as follows:

■ a. Revise paragraph (a)(1);

■ b. In paragraphs (b)(2) through (6), remove ''documentation'' and add in its place ''records'' wherever it appears;

■ c. In paragraph (b)(5), remove ''computerized magnetic media, such as magnetic tapes or magnetic diskettes'' and add in its place ''digital storage devices''; and

■ d. Revise paragraph (b)(8).

The revisions read as follows:

§ 9033.1 Candidate and committee agreements.

(a) * * *

(1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall agree in a writing signed by the candidate to the Commission that the candidate and the candidate's authorized committee(s) will comply with the conditions set forth in 11 CFR 9033.1(b). The candidate may submit the written agreement required by this section at any time after January 1 of the year immediately preceding the Presidential election year.

* * * * *

(b) * * *

(8) The candidate and the candidate's authorized committee(s) will submit the name, email address, and mailing address of the person who is entitled to receive matching fund payments on behalf of the candidate and the name and address of the campaign depository designated by the candidate as required by 11 CFR part 103 and 11 CFR 9037.3. Changes in the information required by this paragraph shall not be effective until submitted to the Commission in a writing signed by the candidate or the Committee treasurer.

* * * * *

§ 9033.2 [Amended]

■ 128. Amend § 9033.2 as follows:

■ a. In paragraph (a)(1), remove ''letter containing the required certifications'' and add in its place ''certifications''; and

■ b. In paragraph (c), remove ''documentation'' and add in its place ''records''.

§ 9033.5 [Amended]

■ 129. Amend paragraph (a)(2) of § 9033.5 by removing ''by letter'' and adding in its place ''in writing''.

■ 130. Amend § 9033.11 as follows:

■ a. Revise the section heading;

■ b. Revise the paragraph heading of paragraph (b);

■ c. In the introductory text to paragraph (b)(1), add ''or a record of

electronic transfer'' after the words ''canceled check negotiated by the payee''.;

■ d. In paragraphs (b)(1)(ii)(A) and (B), remove ''documents'' and add in its place ''records'' wherever it appears;

■ e. In the introductory text to paragraph (b)(1)(iii) and paragraph (b)(1)(iv), remove ''documentation'' and add in its place ''record'' wherever it appears;

■ f. In paragraph (b)(1)(iv), remove ''the payee'' and add in its place ''the payee or the record of electronic transfer'';

■ g. In paragraph (b)(2)(ii), add ''or a record of electronic transfer'' after the words ''canceled check negotiated by the payee'';

and

■ h. In paragraphs (b)(4) and (c), remove ''documentation'' and add in its place ''records'' wherever it appears.

The revisions read as follows:

§ 9033.11 Records of disbursements.

* * * * *

(b) *Records required.* * * *

* * * * *

§ 9033.12 [Amended]

■ 131. Amend § 9033.12 as follows:

■ a. In paragraph (a), remove ''computerized magnetic media, such as magnetic tapes or magnetic diskettes'' and add in its place ''digital storage devices'';

■ b. Remove paragraph (b) and redesignate paragraph (c) as paragraph (b); and

■ c. In newly redesignated paragraph (b), remove ''documentation'' and add in its place ''records''.

PART 9034—ENTITLEMENTS

■ 132. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

■ 133. Amend § 9034.2 as follows:

■ a. In paragraph (b), remove ''and the card number'' from the last sentence;

■ b. In the introductory text to paragraph (c), remove ''and card number'' from the last sentence;

■ c. In paragraph (c)(1)(i), remove ''written document'' and add in its place ''writing'';

■ d. In paragraph (c)(1)(iii), remove ''documentation'' and add in its place ''records''; and

■ e. Add paragraph (c)(8)(iii).

The addition reads as follows:

§ 9034.2 Matchable contributions.

* * * * *

(c) * * *

(8) * * *

(iii) To be attributed to more than one person, a signed written statement must accompany the credit or debit card contribution indicating that the contribution was made from each individual's personal funds in the amount so attributed.

§ 9034.5 [Amended]

■ 134. Amend § 9034.5(c)(1) and (d) by removing ''documentation'' and adding in its place ''records'' wherever it appears.

§ 9034.6 [Amended]

■ 135. Amend § 9034.6 as follows:

■ a. In paragraph (a)(1), remove ''telephone service, typewriters, and computers'' and add in its place ''telephone and internet service, and computers or other electronic devices'';

and

■ b. In paragraph (b)(3), remove ''telephone service'' and add in its place ''telephone and internet service''.

§ 9034.7 [Amended]

■ 136. Amend § 9034.7(b)(5)(iv) and (v) by removing ''documentation'' and adding in its place ''records'' wherever it appears.

§ 9034.8 [Amended]

■ 137. Amend § 9034.8(b)(4) by removing ''recordkeeping, reporting and documentation'' and adding in its place ''recordkeeping and reporting''.

PART 9035—EXPENDITURE LIMITATIONS

■ 138. The authority citation for part 9035 continues to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

§ 9035.1 [Amended]

■ 139. Amend § 9035.1(c)(3) by removing ''documentation'' and adding in its place ''records''.

PART 9036—REVIEW OF MATCHING FUND SUBMISSIONS AND CERTIFICATION OF PAYMENTS BY COMMISSION

■ 140. The authority citation for part 9036 continues to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

§ 9036.1 [Amended]

■ 141. Amend § 9036.1 as follows:

■ a. In paragraph (b)(2), remove ''computerized magnetic media, such as magnetic tapes or magnetic diskettes'' and add in its place ''digital storage devices'';

■ b. In paragraphs (b)(3) and (4), remove ''documentation'' and add in its place ''records'' wherever it appears;

■ c. In paragraph (b)(4), add '', or, for deposits made electronically, information associating contributions to their deposit in the designated campaign depository, such as a batch number'' after the words ''bank statements'';

■ d. In paragraph (b)(5), remove ''full-size photocopy of each unpaid check, and copies of'' and add in its place ''record that contains a complete image of each unpaid check and''; and

■ e. In paragraph (b)(6), remove ''full-size photocopy'' and add in its place ''record that contains a complete image''.

■ f. In paragraph (b)(7), remove ''documentation'' and add in its place ''records'' wherever it appears;

§ 9036.2 [Amended]

■ 142. Amend § 9036.2 as follows:

■ a. In paragraph (b)(1)(ii), remove ''either solely in magnetic media from or in both printed and magnetic media forms'' and add in its place ''in printed or digital form or a combination of printed and digital forms'';

■ b. In paragraph (b)(1)(iii), remove ''checks returned unpaid'' and add in its place ''checks returned unpaid or credit or debit card or other electronic payment chargebacks'';

■ c. In paragraph (b)(1)(vi), remove ''as specified in the Computerized Magnetic Media Requirements'' from the second sentence;

■ d. In paragraph (b)(1)(vi), remove ''shall provide the computer equipment and software needed to retrieve and read the digital images, if necessary, at no cost to the Commission, and'' from the fourth sentence; and

■ e. In paragraphs (b)(1)(vi) and (vii), remove ''documentation'' and add in its place ''records'' wherever it appears.

§ 9036.3 [Amended]

■ 143. Amend the heading, introductory paragraph, and paragraphs (b), (b)(4), and (d) of § 9036.3 by removing ''documentation'' and adding in its place, ''records'' wherever it appears.

§ 9036.4 [Amended]

■ 144. Amend § 9036.4(b)(4) by removing ''documentation'' and adding in its place ''records''.

§ 9036.5 [Amended]

■ 145. Amend § 9036.5(c)(1) by removing ''documentation'' and adding in its place ''records'' wherever it appears.

PART 9038—EXAMINATIONS AND AUDITS

■ 146. The authority citation for part 9038 continues to read as follows:

Authority: 26 U.S.C. 9038 and 9039(b).

§ 9038.1 [Amended]

■ 147. Amend § 9038.1 as follows:

■ a. In the introductory text to paragraph (b)(1), remove ''the Commission may request additional or updated computerized information'' and add in its place ''the Commission may request additional or updated information''; and

■ b. In paragraphs (b)(1)(iv) and (c)(2), remove ''documentation'' and add in its place ''records'' wherever it appears.

§ 9038.2 [Amended]

■ 148. Amend § 9038.2(b)(3) by removing ''documentation'' from the paragraph heading and adding in its place ''records''.

§ 9038.7 [Amended]

■ 149. Amend § 9038.7 as follows:

■ a. In paragraph (a), remove ''documents'' and add in its place ''documents, records,'' wherever it appears; and

■ b. In paragraph (b)(2), remove ''tapes'' and add in its place ''recordings'' wherever it appears.

PART 9039—REVIEW AND INVESTIGATION AUTHORITY

■ 150. The authority citation for part 9039 continues to read as follows:

Authority: 26 U.S.C. 9039.

§ 9039.2 [Amended]

■ 151. Amend § 9039.2 as follows:

■ a. In paragraph (a)(3), remove ''documents'' and add in its place ''documents or records''; and

■ b. In paragraph (b), remove ''documentation'' and add in its place ''records''.

§ 9039.3 [Amended]

■ 152. Amend § 9039.3(b)(2)(vi) by removing ''documents'' and adding in its place ''records''.

On behalf of the Commission,
Dated: October 11, 2016.

Matthew S. Petersen,

Chairman, Federal Election Commission.

[FR Doc. 2016–25102 Filed 11–1–16; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 212 November 2, 2016

Part III

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 1370

Family Violence Prevention and Services Programs; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1370

RIN 0970–AC62

Family Violence Prevention and Services Programs

AGENCY: Family and Youth Services Bureau (FYSB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This rule will better prevent and protect survivors of family violence, domestic violence, and dating violence, by clarifying that all survivors must have access to services and programs funded under the Family Violence Prevention and Services Act. More specifically, the rule enhances accessibility and non-discrimination provisions, clarifies confidentiality rules, promotes coordination among community-based organizations, State Domestic Violence Coalitions, States, and Tribes, as well as incorporates new discretionary grant programs. Furthermore, the rule updates existing regulations to reflect statutory changes made to the Family Violence Prevention and Services Act, and updates procedures for soliciting and awarding grants. The rule also increases clarity and reduces potential confusion over statutory and regulatory standards. The rule codifies standards already used by the program in the Funding Opportunity Announcements and awards, in technical assistance, in reporting requirements, and in sub-regulatory guidance.

DATES: This final rule becomes effective January 3, 2017.

FOR FURTHER INFORMATION CONTACT: Marylouise Kelley, Ph.D., Division Director, (202) 401–5756 (not a toll-free call), *marylouise.kelley@acf.hhs.gov.* Individuals who are deaf or hard of hearing may call the Federal Dual Party Relay Service at 1–800–977–8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

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I. Statutory Authority

This final rule is being issued under the authority granted to the Secretary of Health and Human Services by the Family Violence Prevention and Services Act (FVPSA), 42 U.S.C. 10404(a)(4), as most recently amended by the Child Abuse Prevention and Treatment (CAPTA) Reauthorization Act of 2010 (Pub. L. 111–320).

II. Background

FVPSA grants are administered to: Assist States and Indian Tribes in efforts to increase public awareness about, and primary and secondary prevention of, family violence, domestic violence, and dating violence; assist States and Indian Tribes in efforts to provide immediate shelter and supportive services for victims of family violence, domestic violence, or dating violence, and their dependents; provide for a national domestic violence hotline; provide for technical assistance and training relating to family violence, domestic violence, and dating violence programs to States and Indian Tribes, local public agencies (including law enforcement agencies, courts, and legal, social service, and health care professionals in public agencies), nonprofit private organizations (including faith-based and charitable organizations, community-based organizations, and voluntary associations), Tribal organizations, and other persons seeking such assistance and training. This final rule covers all of these activities.

III. Notice of Proposed Rulemaking

ACF published a Notice of Proposed Rulemaking (NPRM) on October 14, 2015 to propose regulations that ensure victims of domestic and dating violence and their dependents are provided shelter and supportive services that meet statutory requirements and incorporate field-based best practices. The NPRM proposed regulatory guidance for all FVPSA-funded formula and discretionary grantees and subgrantees.[1] The NPRM also proposed to incorporate statutory provisions that were not in the existing rule. In addition to general comments, the NPRM sought input from commenters on a number of specific requirements and provisions.

ACF received 41 public comments from individuals and advocacy organizations. We include a detailed summary of comments as well as HHS' responses to comments in Section IV of this final rule. Public comments on the proposed rule are available for review on *www.regulations.gov.*

IV. General Comments and the Final Rule

Key provisions to this ACF final rule lay out a framework to address reauthorized statutory language within the context of field-based best practices and programmatic guidance. The rule reflects a reorganization of the previous regulations that specifically divide formula grants and discretionary grants into independent sections and add new grants programs; including *Specialized Services for Abused Parents and Their Children* (emphasis added). The rule also provides guidance that addresses accessibility and discrimination by clarifying and reinforcing that anti-discrimination provisions apply to all grantees. In FVPSA Reauthorization 2010, the anti-discrimination language, formerly contained in a separate statutory section applicable to the entire title, was relocated to the formula grants to States section. This led to confusion and was interpreted by some as only applying to State formula grantees. The new regulatory language eliminates this confusion and makes it clear that the anti-discrimination provisions continue to encompass all FVPSA grant programs and apply to all grantees and subgrantees.

The final rule also includes a definition for ''personally identifying information (PII) or personal information'' to ensure that all grantees and subgrantees have a clear, shared understanding of confidentiality requirements. The statutory voluntary services and no conditions on the receipt of emergency shelter requirements reinforce that services must be voluntary and no conditions can be imposed on receipt of emergency shelter. The regulation incorporates these new requirements, and further specifies the prohibition on imposing ''conditions'' to prohibit shelters from

[1] The terms ''grantee'' and ''recipient'' are interchangeable pursuant to 45 CFR part 75. Although 45 CFR part 75 uses the term ''recipient'' throughout, its definition section defines ''grantee'' by citing to the definition for ''recipient''. See 45 CFR 75.2. Therefore, for purposes of this rule, ACF will primarily use the terms ''grantee'' and ''subgrantee'' to refer to ''recipients'' and ''sub-recipients'' to align with the terms used in 45 CFR part 75, except where there are FVPSA references to ''contractors'', in which case ''recipient'' and ''sub-recipient'' will be used where appropriate. For purposes of referring to victims of domestic, dating, and family violence as program or service clients or beneficiaries, the term ''beneficiary'' will be used where appropriate and to avoid confusion with ''recipient.''

applying inappropriate screening mechanisms, such as criminal background checks or sobriety requirements. Similarly, the receipt of shelter should not be conditioned on participation in other services, such as counseling, parenting classes, or life-skills classes. Such requirements not only impede on the basic human need for access to shelter, but could also limit access to lifesaving shelter and services and have the potential of contradicting best practices related to trauma-informed direct service provision.

The final rule also includes guidance about State/Tribal planning and State/Tribal Domestic Violence needs assessments that promote greater coordination of these statutorily required activities to foster inclusion of underserved communities and better identify the needs of all victims of domestic and dating violence. Specialized Services for Abused Parents and Their Children and State resource centers to reduce disparities in domestic violence in States with high proportions of Indian (including Alaska Native) or Native Hawaiian populations (§ 1370.30) are newly authorized programs, also included in the rule.

Below we have summarized the primary changes made after the NPRM was published as a direct result of the comments received. It is important to note that all of the changes are fairly minor and none result in a significant impact on the overall direction of the key provisions listed above.

Section 1370.2 What definitions apply to these programs?

Definitions—Most of the definitions included in the final rule are amended to clarify and specify the terms. The primary-purpose domestic violence service provider definition is clarified through discussion to indicate that the term only applies to the membership requirements of a State Domestic Violence Coalition. In some cases, examples are added to the definitions to paint a clearer picture for the field.

Confidentiality—Additional language is added to the confidentiality provisions to clarify that nothing in the rule prohibits disclosure if there is an imminent risk of serious bodily injury or death of the victim or another individual. The final rule also includes two additional subsections that provide guidance to shelters to clarify that consent to a release of information cannot be a condition of service, and to clarify that tribal governments may determine how to maintain the safety and confidentiality of shelter locations. Additional technical changes are made to this section in response to the comments.

Non-Discrimination and Accessibility—Revisions to the text are made to strengthen the non-discrimination requirements related to sexual orientation and gender identity, including specific language related to transgender and gender non-conforming individuals. This final rule also partially incorporates standards outlined by the Department of Justice's Office on Violence Against Women in order to allow sex segregation or sex-specific programming when it is essential to the normal or safe operation of the program. Additionally, changes are also made to this section to better describe the policies related to housing families together.

Human Trafficking—Based on comments received, provisions of the rule text are removed that would have allowed FVPSA-funded programs to serve victims of human trafficking if space allowed and if they had not experienced domestic or dating violence. We agree with the commenters who stated that effectively serving human trafficking victims who have not experienced domestic violence or dating violence requires specialized resources, training, and expertise that may be outside the scope of FVPSA-funded programs.

State and Tribal Grants—The rule text is slightly revised to clarify the expectation for States and State Domestic Violence Coalitions to work together. The final rule specifies how States should identify underserved populations and work with Tribes and Tribal coalitions. We also allow States to use their own definition of urban and rural in the final rule.

State Domestic Violence Coalition Grants—Minor and technical changes are made throughout this section of the rule to more accurately reflect the roles and purposes of State Domestic Violence Coalitions and to ensure newly formed Coalitions can compete for resources should there be newly-designated coalitions due to mergers or dissolution.

Grants for Specialized Services for Abused Parents and their Children—The final rule includes a stronger emphasis on confidentiality requirements for these grants. We also added a section that prevents professionals working with children and families from inappropriately punishing non-abusive parents for, among other things, cohabiting with an abusive parent. Technical changes are also made to better reflect the statutory language.

Domestic Violence Hotline Grants—This section now includes video among the examples of communication methods in the definition of telephone.

ACF received general comments about this rule. Below, ACF summarizes comments and responds accordingly.

Comment: Many commenters supported the NPRM generally, including Tribes and Tribal organizations, national and State organizations, shelters, non-residential service providers, and community members. One commenter said the proposed rule strengthens Family Violence Prevention and Services programs and benefits those affected by domestic violence. Another commenter stated that the regulations seem very helpful and hoped that the NPRM achieves its goals. A commenter agreed with the proposed revisions because they benefit underprivileged populations and would increase the clarity and reduce confusion over statutory and regulatory changes. One other commenter stated that they feel strongly that this proposed rule has merit behind it, that with dating abuse being such a sensitive and important subject, it is clear that the intent of the revisions is to help victims of domestic violence. This commenter also felt that it is beneficial to give clearer definitions of domestic violence so that there is no confusion about eligibility for services. Finally, another commenter commended HHS and the Administration for the work to ensure that domestic violence survivors have appropriate access to domestic violence programs and to safety and confidentiality for victims.

Response: ACF appreciates the positive comments and believes that FVPSA-funded programs will benefit from the additional clarity and program guidance. In this final rule, ACF includes provisions that improve Federal oversight, ensure accountability for purposes consistent with FVPSA, and promote increased coordination and collaboration among and between grantees and subgrantees.

Comment: One commenter suggested that the NPRM preamble be amended to clarify how this rule furthers the government's efforts to ensure the human right to be free from domestic violence. The commenter suggested that the preamble explicitly capture how the proposed rule fosters human rights and meets basic needs and asked that ACF include revised preamble language to incorporate the ''due diligence'' standard, representing the internationally accepted standard to guide government efforts to address the

rights of women, specifically the right to be free from domestic violence.[2]

Response: Our goal in implementing this rule is to better prevent and protect survivors of family violence, domestic violence, and dating violence, in accordance with the Family Violence Prevention and Services Act (FVPSA) at 42 U.S.C. 10404(a)(4). While we have not revised the language in this preamble to extensively discuss the human rights framework, ACF appreciates the goals of the human rights framework for addressing gender-based violence and the incorporation of human rights into government programs, such as how basic needs like housing are critical for people to live free from violence. Additionally, while we have not revised the language in this preamble to extensively discuss the human rights framework, ACF appreciates the goals of the human rights framework for addressing gender-based violence and the incorporation of human rights into government programs, such as how basic needs like housing are critical for people to live free from violence.

Comment: Two commenters suggested that any HHS regulation should mirror the language in FVPSA and not create new requirements beyond what FVPSA requires and which are not legally tenable.

Response: The Secretary is delegated specific authority in 42 U.S.C. 10404(a)(4) to prescribe such regulations and guidance as are reasonably necessary in order to carry out the objectives and provisions of FVPSA, including regulations and guidance on implementing new grant conditions established or provisions modified by amendment to FVPSA by the Child Abuse Prevention and Treatment Act (CAPTA) Reauthorization Act of 2010, Public Law 111–320, to ensure accountability and transparency of the actions of grantees and contractors, or as determined by the Secretary to be reasonably necessary to carry out FVPSA. As such, regulatory requirements identified in this rule, including new or revised definitions, are provided to support grantees and ensure consistency in FVPSA-funded programs and projects. Other non-definitional and programmatic requirements are included to support the effective Federal administration of FVPSA and to promote field-based best practices, which have been longstanding in the program, and communicated through funding opportunity announcements and other guidance to the field.

Comment: A few commenters suggested that a complaint process be included in this rule for program beneficiaries and others to use when they believe their civil rights are being violated by ACF/FVPSA-funded programs and subgrantees.

Response: Consistent with existing law and regulations, HHS Office of Civil Rights (OCR) will continue to accept, screen and investigate civil rights complaints for all federal health and human services programs, including FVPSA. More specifically, the OCR addresses complaints of discrimination based on race, color, national origin, disability, age, sex (including sex stereotyping and gender identity), or religion in programs or activities that HHS directly operates or to which HHS provides federal financial assistance. Given OCR's expertise, it does not make sense for FVPSA to have its own complaint process. At the same time, the ACF/FVPSA Program may be contacted by grantees, subgrantees, contractors, and individuals to make complaints and identify other concerns, and it will monitor such issues to provide guidance and potentially take corrective action to remedy violations of FVPSA statutory and regulatory requirements. Corrective action is an official process involving multiple HHS/ACF components to help ensure legal and programmatic integrity. However, there is no requirement that ACF be contacted first for alleged civil rights violations and/or ACF may receive a complaint and refer it for investigation rather than address it programmatically; decisions on these matters are addressed case by case. To file a complaint of discrimination regarding a program receiving Federal financial assistance through the U.S. Department of Health and Human Services (HHS), write: HHS Director, Office for Civil Rights (OCR), Room 515–F, 200 Independence Avenue SW., Washington, DC 20201. Persons needing help filing a civil rights complaint may contact OCR at *OCRMail@hhs.gov,* or call 1–800–368–1019 (voice) or (800) 537–7697 (TTY). Persons may also file complaints using the OCR Complaint Portal at: *https://ocrportal.hhs.gov/ocr/cp/complaint_frontpage.jsf.*

Comment: Two commenters suggested that the rule address violence generally, beyond the statutorily required family, domestic, and dating violence.

Response: The FVPSA program and this rule focus entirely on family, domestic, and dating violence. Violence, other than family, domestic and dating violence, is not within the scope of the FVPSA statute and therefore cannot be addressed in this rule.

Comment: One commenter suggested that more grants be awarded to public entities in contrast to private entities. This commenter acknowledged that private entities tend to have more capacity and abilities when it comes to certain areas versus the public sector. Specifically, the commenter would like to see more colleges and universities funded by ACF with FVPSA funding.

Response: ACF did not make any changes in response to this comment. ACF makes funding available to all categories of eligible applicants based on the eligibility requirements outlined in statute for each program identified in FVPSA, which may include institutions of higher education. Discretionary grants are awarded pursuant to independent peer review processes and, in accordance with statutory requirements, formula grants are awarded directly to State grantees, Tribes, Tribal organizations, and State Domestic Violence Coalitions. States may subgrant/subcontract to programs, organizations, and agencies within their jurisdictions using independent grants' awards processes. Tribes or Tribal organizations may subgrant/subcontract to programs or organizations within their jurisdictions. Due to the statutory formula, ACF has limited discretion in determining who receives FVPSA funding.

Comment: Multiple commenters supported NPRM language that addressed the need for improving access for underserved populations, including battered immigrants and Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) individuals, to FVPSA-funded programs and services.

Response: ACF appreciates the positive comments and believes that FVPSA-funded programs will benefit from the additional clarity and program guidance related to serving these populations. We also provide additional detail throughout the section-by-section public comments and responses, including definitions and other guidance, that help to promote programmatic accessibility for victims and their families regardless of sexual orientation, gender identity, or immigration status. We discuss the comments on the definition of

[2] *See e.g.,* Special Rapporteur on Violence against Women, The Due Diligence Standard as a Tool for the Elimination of Violence Against Women, ¶ 17, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006) (by Yakin Ertürk), *available at http://daccessddsny.un.org/doc/UNDOC/GEN/G06/103/50/PDF/G0610350.pdf?OpenElement;* Special Rapporteur on Violence against Women, Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to the United States, U.N. Doc. A/HRC/17/26/Add.5 (Jun. 6, 2011), *available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/138/26/PDF/G1113826.pdf?OpenElement.*

''underserved population'' and the services that must be provided to FVPSA recipients in more detail later in the rule.

Comment: One commenter suggested that the implementation of the rule be delayed to allow grantees (specifically State formula grantees) to close out existing FVPSA sub-recipient awards. This commenter suggested that because it recently competed and awarded contracts to sub-recipients that new requirements imposed prior to the expiration of sub-recipient contracts would potentially require re-competing sub-recipient contracts and create funding delays for shelter and supportive services throughout the State.

Response: The NPRM preamble states ''all grantees will be expected to comply with standards and other requirements upon the final rule's effective date.'' While ACF understands and acknowledges that some direct grantees will need to make adjustments to both current and future subgrant/recipient award instruments resulting from new regulatory guidance, it is not feasible to delay the effective date to align with the contracting and procurement regulations in all States. ACF expects States to amend subgrant/recipient awards where appropriate to ensure compliance with these regulations. Further, there is no language in the rule which impedes States' FVPSA funding distribution, granting, or contracting processes. ACF does not intend through this rulemaking for States or Tribes to terminate existing subgrant/recipient awards for the purpose of implementing new regulatory requirements. Finally, for clarification and as indicated above, the final rule becomes effective 60 days after publication in the **Federal Register**. As previously mentioned, many of the provisions in this rule have been longstanding practice in the program, and have been communicated through funding opportunity announcements and other guidance to the field.

V. Section-by-Section Discussion of Comments and the Final Rule

ACF received comments about changes proposed to specific sections in the regulation. Below, ACF identifies each section, summarizes the comments, and responds accordingly.

Subpart A—General Provisions

Section 1370.1 What are the purposes of the Family Violence Prevention and Services Act programs?

Comment: A commenter suggested that one of the purposes of FVPSA-funded programs, to assist States and Indian Tribes in efforts to provide immediate shelter and supportive services for victims of family, domestic, and dating violence, should also include and support evolving mechanisms to provide safety and stability in, and connected to, shelter for victims. The commenter interpreted the definition of shelter, defined as temporary refuge in the statute and NPRM, as offering victims a place away from danger and to allow the form of refuge to be more flexible than shelter, often interpreted as communal living, especially in reference to immediate or emergency shelter. The commenter suggested that the shelter and supportive services statutory purpose area include housing advocacy and supports that allow for other methods of shelter service delivery.

Response: We agree. Therefore, ACF interprets the statutory purpose of assisting States and Indian Tribes in efforts to provide immediate shelter and supportive services to include flexibility in the types of shelter/housing provided for victims of family, domestic, and dating violence. Therefore, we incorporated into the final rule a revised definition of shelter/temporary refuge to include evolving models of shelter/housing and supportive services. ACF has been quite involved with the field and Federal partners as well as the private sector to address family homelessness, including homelessness caused by domestic violence. State and Tribal grantees and subgrantees have reported that flexibility in the methods of shelter provision and supportive services is necessary to meet demand, and more importantly, what victims need and desire to achieve safety and social and emotional well-being. The field reports that many victims would prefer supports connected to temporary refuge while offering non-communal methods of shelter and supportive services. Victims benefit from having access to multiple options for safe housing which could include mobile advocacy connected to temporary housing assistance/shelter, scattered site housing, or support for victims who remain in their homes, in addition to shelter-based options.

Section 1370.2 What definitions apply to these programs?

Dating Violence

Comment: A few commenters suggested revisions to the definition of dating violence. Commenters identified that the definition does not include the types of violence that the definition is intended to cover and therefore is more restrictive than the expanded definition of domestic violence.

Response: After careful consideration, ACF agrees that it would be helpful to revise the definition to include examples of the kinds of violence that are intended in the definition. Following additional comments and responses below, the final rule revises the definition of dating violence to include, but not be limited to, the physical, sexual, psychological, or emotional violence within a dating relationship, including stalking.

Comment: One of the commenters noted that dating violence does not explicitly include emotional or psychological abuse, unlike the definition of domestic violence. The same commenter suggested for consistency that we define the term by adding the definition used by the Centers for Disease Control and Prevention (CDC). The CDC defines dating violence as the physical, sexual, psychological, or emotional violence within a dating relationship, including stalking. The CDC further explains this can happen in person or electronically and might occur between a current or former dating partner.

Response: Per the previous comment, a revised definition is provided to reflect the CDC's definition of dating violence to include, but not be limited to, the physical, sexual, psychological, or emotional violence within a dating relationship, including stalking. The definition is further revised to read that dating violence can happen in person or electronically. Specifically, the definition of dating violence is revised as follows: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: The length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. This part of the definition reflects the definition also found in Section 40002(a) of VAWA (as amended), 42 U.S.C. 13925(a), as required by FVPSA. Dating violence also includes but is not limited to the physical, sexual, psychological, or emotional violence within a dating relationship, including stalking. It can happen in person or electronically, and may involve financial abuse or other forms of manipulation which may occur between a current or former dating partner regardless of sexual orientation or gender identity.

Comment: A commenter suggested that the definition of dating violence

should identify the dating ages covered by the definition and that more information on the frequency of the interaction of the individuals in the relationship be provided.

Response: Neither FVPSA nor the Violence Against Women Act (VAWA) address age or frequency of interaction because they are different in every case. Adolescents and adults of all ages engage in dating relationships. Additionally, providing more guidance on the frequency of the interactions of those in such relationships could exclude cases where the frequency of interactions is minimal but the length and types of the relationships are especially critical in determining whether a dating violence relationship exists. Therefore, ACF will use the definition provided below without incorporating these suggestions.

Comment: A few commenters suggested that financial abuse be added to the definition of dating violence.

Response: Financial abuse is a common abuser tactic which may not always be interpreted to be a form of psychological or emotional abuse. We have clarified the definition of dating violence to explicitly reflect that financial abuse is also within the purview of dating violence.

Comment: One commenter suggested that the definition of dating violence (as well as the definitions of domestic and family violence) be revised to combine all three definitions into one section that is split into two parts: (1) Definitions for the types of violence; and (2) the relationships within the purview of the types of violence.

Response: We did not make changes based on this comment. FVPSA establishes the framework and organization of these definitions, therefore ACF, for consistency and continuity, will continue to use the definitions as they are fundamentally organized in the statute.

Comment: As noted in Section IV. General Comments and the Final Rule, several commenters on many sections of the NPRM, including the definition of dating violence, identified the importance of ensuring programmatic accessibility for victims and their families regardless of sexual orientation or gender identity.

Response: To ensure programmatic accessibility for all qualified individuals, ACF revised definitions and other rule guidance in section 1370.5 that makes clear that FVPSA-funded programs must serve victims and their families regardless of actual or perceived sexual orientation, gender identity.

Comment: Another commenter stated that the NPRM's definition of dating violence fails to acknowledge that it can happen quickly and briefly, and that there is no amount of time that can justify violence, referring to the definition's focus on the frequency of the interaction between the individuals in the relationship.

Response: We have not made any revisions to the rule in response to this comment because the dating violence definition found in the FVPSA statute does not imply that violence can be justified because it only happens once or just a couple of times. Instead, the definition references the frequency of the interaction between those in the relationship rather than the frequency of the violence.

However, given the other comments identified above, we have revised the definition. The definition of dating violence is revised to read as 'violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship'. This part of the definition reflects the definition also found in Section 40002(a) of VAWA (as amended), 42 U.S.C. 13925(a), as required by FVPSA. Dating violence also includes but is not limited to the physical, sexual, psychological, or emotional violence within a dating relationship, including stalking. It can happen in person or electronically, and may involve financial abuse or other forms of manipulation which may occur between a current or former dating partner regardless of actual or perceived sexual orientation, gender identity.

Domestic Violence

Comment: A commenter stated that the definition of domestic violence is not clear about whether coercive, controlling acts used in the NPRM to further clarify the domestic violence definition, must be criminal. Read in the context of the first sentence of the definition, the commenter said that it appears that domestic violence may not encompass coercive, controlling acts that are not criminal, such as controlling finances or isolating a partner from friends or family members. The commenter suggested that the definition be amended to read, ''this definition will also include but will not be limited to criminal and non-criminal acts constituting . . . ''

Response: We appreciate this comment. Domestic Violence includes a spectrum of coercive and controlling behaviors which include physical, emotional, and psychological behaviors that may be criminal acts in some States and not in others. To avoid confusion and to promote consistency, we revised the definition to include the proposed distinction between criminal and non-criminal coercive, controlling acts. The revised definition is below.

Comment: Several commenters suggested that financial abuse be added to the definition of domestic violence.

Response: As identified in the comments on the dating violence definition, financial abuse is a common abuser tactic and, therefore, ACF revised the definition accordingly to make clear that financial abuse is within the purview of domestic violence. Additionally, ACF made a technical correction to the domestic violence definition by removing the sentence, ''Older individuals and those with disabilities who otherwise meet the criteria herein are also included within this term's definition.'' The sentence was removed because commenters identified that adding or singling out specific populations while not adding others causes confusion and may be interpreted by some to mean that ACF is promoting one population over another which is not the case.

As a result of all comments on the domestic violence definition, the term is revised to mean felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. This definition also reflects the statutory definition of ''domestic violence'' found in Section 40002(a) of VAWA (as amended*),* 42 U.S.C. 13925(a). This definition also includes but is not limited to criminal or non-criminal acts constituting intimidation, control, coercion and coercive control, emotional and psychological abuse and behavior, expressive and psychological aggression, financial abuse, harassment, tormenting behavior, disturbing or alarming behavior, and additional acts recognized in other Federal, Tribal, State, and local laws as well as acts in

other Federal regulatory or sub-regulatory guidance. This definition is not intended to be interpreted more restrictively than FVPSA and VAWA but rather to be inclusive of other, more expansive definitions. The definition applies to individuals and relationships regardless of actual or perceived sexual orientation, gender identity.

Family Violence

Comment: One commenter indicated that the terms family violence and domestic violence are not used interchangeably in their State and that, in fact, family violence is not commonly used at all (referencing the NPRM preamble language proposing that the terms be used interchangeably). The commenter explained that family violence is broader than domestic violence and that it encompasses many forms of violence with differing circumstances and dynamics, *e.g.* child maltreatment, elder abuse by an adult child, and sibling to sibling violence. The commenter suggested that more specific terms be used to distinguish between family violence and domestic violence or that family violence be defined to refer to forms of violence which are not included in the domestic violence definition.

Response: Both terms are defined in the FVPSA statute which include overlapping and intersecting relationships and forms of violence. However, as explained in the NPRM preamble, both the field and Congress have used the terms interchangeably for decades, notwithstanding that there are also those in the field who may not use one term or the other, such as due to varying States' laws' definitions of the terms. Additionally, legislative history indicates that family violence is the term less commonly relied upon and that Congress has historically appropriated FVPSA funds to address domestic violence. Both terms will continue to be used programmatically, as also explained in the NPRM preamble, with more extensive use of the term domestic violence; however, the regulatory text will not address interchangeability of the terms domestic violence and family violence to avoid potential confusion with statutory definitions.

Comment: Another commenter suggested that the family violence definition be expanded to include ''in the context of a pattern of coercive control or with the effect of gaining coercive control.''

Response: Since the domestic violence definition includes coercion and coercive control, ACF has determined that continued expansion of the family violence term is unnecessary.

Comment: One commenter suggested that because the definitions of family, domestic, and dating violence do not impose age limitation on victims, the proposed rule should be clarified to state that younger adolescents do not have to be served in domestic violence shelters without the presence of their legally responsible adults.

Response: FVPSA is the legally binding authority regarding eligibility for services for FVPSA-funded programs. Since FVPSA does not limit services' eligibility to adults, ACF cannot restrict services' eligibility in this way. Adolescents' access to *domestic violence* programs as victims of domestic or dating violence themselves, rather than as child witnesses who usually enter shelter as dependents of abused parents or guardians, is complicated by the variations among States' emancipation and/or child abuse and neglect laws. As a result, shelter provision to adolescents, as primary victims themselves, is not a regulatory issue that will generally be addressed in this rule except to say that for adolescents who are able to access shelter as the primary victim, they must receive welcoming and accessible shelter and supportive services comparable to services provided to other victims. Additionally, adolescents and children who enter *shelter* as a victim's dependent must be provided welcoming and accessible shelter and supportive services comparable to the services provided to other victims. As a result of this comment, we have not revised the definition of family violence. However, we made a technical correction to the rule text to the remove the sentence originally included in the NPRM, ''Please note that this guidance is not a change in previous grantee guidance as survivors of intimate partner violence, regardless of marital status have always been eligible for FVPSA-funded services and programming.'' The sentence ultimately does not change the definition and, therefore, is unnecessary.

Personally Identifying Information

Comment: Three commenters suggested that the personally identifying information (PII) definition include the term ''personal information'' as reflected in the statute, and to be interchangeable terms.

Response: ''Personal information'' is not specifically included in FVPSA, except that FVPSA cites the VAWA definition as the FVPSA definition, and VAWA identifies ''personal information'' and ''personally identifying information'' as interchangeable. Therefore, we revised the term as personally identifying information (PII) or personal information in the final rule.

Comment: One commenter asked that in the proposed rule text, referencing the proposed definition of PII, we remove the language ''note that information remains personally identifying even if physically protected through locked filing cabinets . . .'' because the FVPSA/VAWA definition already includes information that is ''otherwise protected.'' The commenter suggested that a definition that mentions locked filing cabinets is confusing in the context of information sharing because grantees typically don't disclose information by transmitting entire filing cabinets. The commenter also stated that the definition may give rise to an implication that it is not allowable for grantees to keep personally identifying information, even in a locked filing cabinet.

Response: We agree, therefore, the language is removed in the rule definition. The final rule definition is as follows: Personally identifying information (PII) or personal information is individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including, (A) a first and last name; (B) a home or other physical address; (C) contact information (including a postal, email or Internet protocol address, or telephone or facsimile number); (D) a social security number, driver license number, passport number, or student identification number; and (E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify any individual.

Primary Prevention

Comment: Two commenters suggested that a non-exhaustive list of primary prevention examples be used to provide additional guidance for FVPSA-recipients and the field.

Response: Since primary prevention is an extremely important mechanism for eradicating domestic and dating violence by modifying the events, conditions, situations, or exposure to influences that result in the initiation of domestic and dating violence and associated injuries, disabilities, and deaths, ACF agrees that a short list of examples in the term's definition would

be helpful. Therefore, primary prevention is defined in the rule as strategies, policies, and programs to stop both first-time perpetration and first-time victimization. Primary prevention is stopping domestic and dating violence before they occur. Primary prevention includes, but is not limited to: School-based violence prevention curricula, programs aimed at mitigating the effects on children of witnessing domestic or dating violence, community campaigns designed to alter norms and values conducive to domestic or dating violence, worksite prevention programs, and training and education in parenting skills and self-esteem enhancement.

Primary-Purpose Domestic Violence Service Provider

Comment: One commenter indicated that the NPRM's definition of primary-purpose domestic violence provider excludes governmental entities or municipalities and therefore limits States from making subgrant/recipient awards to governmental entities or municipalities for shelter and supportive services pursuant to 42 U.S.C. 10406(b)(2) and 10408(a).

Response: The definition of primary-purpose domestic violence provider in § 1370.2 of the proposed rule is provided only to clarify the membership requirement in the definition of State Domestic Violence Coalition (Coalition(s)) in 42 U.S.C. 10402(11) and therefore is limited only to this definition. It is not intended to describe eligible entities under 42 U.S.C. 10408(c) for subgrants awarded by FVPSA-funded State grantees, nor is it intended to define ''primary-purpose program or project'', ''primary-purpose organization,'' or any other term, phrase, or sentence which uses the term ''primary-purpose.'' FVPSA at 42 U.S.C. 10408 does not use the term primary purpose domestic violence service provider, nor does that term appear in the statute except in the definition of a Coalition.

Moreover, an eligible entity under FVPSA at 42 U.S.C. 10408 may be a local public agency, or a nonprofit private organization (including faith-based and charitable organizations, community-based organizations, Tribal organizations, and voluntary associations), that assists victims of family, domestic, or dating violence, and their dependents (see full description of eligibility including partnerships of agencies at 42 U.S.C. 10408(c)); a city, county, township or any other municipal governmental entity would qualify as a ''local public agency'' under this section. We also therefore agree with the commenter that FVPSA at 42 U.S.C. 10407(a)(2)(B)(iii), which provides that in the distribution of funds by a State, the State will give special emphasis to the support of community-based projects of demonstrated effectiveness that are carried out by nonprofit private organizations, does not exclude governmental entities from receiving FVPSA funds. Finally, since the term ''service'' was inadvertently left out of rule's definition of primary-purpose domestic violence service provider, we made a technical correction to add the term to the rule text.

Comment: One commenter stated there is no definition for the word ''*project*'' in the definition of ''primary-purpose domestic violence service provider'' which is ''a provider that operates a project of demonstrated effectiveness and carried out by a nonprofit, nongovernmental, private entity, Tribe or Tribal organizations that has as its project's primary-purpose the operation of shelters and supportive services for victims of domestic violence and their dependents . . .'' The commenter recommends that the rule be clarified that large social services agencies fit within the definition if they provide distinct services for victims of domestic violence in addition to services to children and families.

Response: As indicated above, the definition of primary-purpose domestic violence service provider is intended only to provide additional clarity to support the membership requirement for Coalitions and is not intended to redefine, nor is it relevant to eligible entities for the purposes of receiving subgrants from States pursuant to 42 U.S.C. 10408. Therefore, if a large social services agency otherwise meets the eligibility requirements under FVPSA at 42 U.S.C. 10408(c), *i.e.* is a local public agency or a nonprofit private organization or part of a partnership of two or more organizations, then it may receive FVPSA funds as a subgrantee of a State (or Tribe) in accordance with the State (or Tribal) plan.

Comment: Commenters were concerned that the designation of ''primary-purpose'' project, organization, or entity does not automatically mean that an organization is an eligible entity, nor does the qualification as an eligible entity for the purposes of receiving a State (or Tribal) subgrant award pursuant to FVPSA at 42 U.S.C. 10408(c) mean that an organization, project or entity is necessarily a primary-purpose entity. A commenter also identified that FVPSA-funded projects or programs that operate under a parent or umbrella agency should be required to have a separate mission statement for the specific domestic violence project/program and its services. The commenter also stated that such a program/project must provide services to domestic violence victims that are central to the project's/program's mission and should not be peripheral or by happenstance.

Response: Per the responses to previous comments and to comments that will follow, the NPRM did not define ''primary-purpose organization,'' nor did it define ''primary-purpose'' in the context of other terms or phrases, except for clarifying the membership requirement espoused in FVPSA defining Coalition. Given the confusion expressed by several commenters, we determined that additional clarity in the definition is needed.

In the Coalition statutory definition, the term primary-purpose domestic violence service provider is used but not defined. Because of the importance of the term in the context of the membership requirements for Coalitions, we defined the term to ensure that Coalitions understand how to meet FVPSA eligibility requirements. The definition of primary purpose domestic violence service provider does not apply to the eligibility requirements for State or Tribal subgrants; FVPSA at 42 U.S.C. 10407 through 10409 read together address the eligible entities and activities for direct State and Tribal grants and their subgrants. The words ''primary purpose'' are statutory terms used in the context of those statutory sections for identifying the kinds of organizations and activities which may be FVPSA-funded by States and Tribes. However, the NPRM did not propose a definition of ''primary purpose'' because the statute connects the term to State and Tribal subgrants for entities with a documented history of effective work concerning family, domestic, or dating violence, or for the primary purpose of operating shelters (in the context of grants for those purposes). Primary purpose domestic violence service provider is therefore limited to FVPSA at 42 U.S.C. 10402(11) and 42 U.S.C. 10411, and to this rule in Subpart A, § 1370.2 (definition of primary purpose domestic violence service provider) and Subpart C, § 1370.20.

After consideration of the comments, the definition of primary purpose domestic violence service provider is revised to read: 'Primary-purpose domestic violence service provider, for the term only as it appears in the definition of State Domestic Violence Coalition, means an entity that operates a project of demonstrated effectiveness carried out by a nonprofit, nongovernmental, private entity, Tribe,

or Tribal organization, that has as its project's primary-purpose the operation of shelters and supportive services for victims of domestic violence and their dependents; or has as its project's primary purpose counseling, advocacy, or self-help services to victims of domestic violence. Territorial Domestic Violence Coalitions may include government-operated domestic violence projects as ''primary-purpose'' providers for complying with the membership requirement, provided that Territorial Coalitions can document providing training, technical assistance, and capacity-building of community-based and privately operated projects to provide shelter and supportive services to victims of family, domestic, or dating violence, with the intention of recruiting such projects as members once they are sustainable as primary-purpose domestic violence service providers.'

Regarding the commenter's request that domestic violence projects, funded via subgrants by States and Tribes, be required to submit mission statements if they operate under the umbrella of a larger organization, we believe it should be left to State and Tribal grantees' discretion to set such requirements. Regarding the commenter's request that such projects' work must be to provide domestic violence services that are central to their missions or purposes, we believe that FVPSA eligibility requirements for activities funded by State and Tribal subgrants already address these issues.

Comment: One commenter objected to this definition because Congress did not define the term and suggested that HHS/ACF exceeded its authority by altering requirements for Coalition membership. The commenter stated that in the context of Coalition membership that FVPSA clearly contemplates that member primary-purpose domestic violence service providers will ''establish and maintain shelter and supportive services for victims of domestic violence'' [FVPSA at 42 U.S.C. 10402(11)]. The commenter further stated that HHS' proposed definition of primary-purpose domestic violence service provider incorrectly includes the provision of ''counseling, advocacy, and self-help services to victims of domestic violence,'' which are prioritized in the State formula grant section pursuant to FVPSA at 42 U.S.C. 10407a)(2)(B)(iii)(I) and (II) but are not included as a primary purpose domestic violence service provider in the statutory Coalition definition at 42 U.S.C. 10402(11). The commenter opined that the proposed definition therefore conflicts with the statutory Coalition definition at 42 U.S.C. 10402(11).

Response: We respectfully disagree. As previously indicated pursuant to FVPSA at 42 U.S.C. 10404(a)(4), the Secretary has the authority to prescribe such regulations and guidance as are reasonably necessary in order to carry out the objectives and provisions of FVPSA, including regulations and guidance on implementing new grant conditions established or provisions modified by amendments made to FVPSA by the CAPTA Reauthorization Act of 2010, Public Law 111–320, to ensure accountability and transparency of the actions of grantees and contractors, *or as determined by the Secretary to be reasonably necessary to carry out this title* (emphasis added).

One essential element of the Coalition definition is that the membership includes a majority of the primary-purpose domestic violence service providers in the State. Given the repeated Coalition requests over the last 5 years to define primary-purpose domestic violence service provider, ACF has determined that considerable confusion exists as to the term's meaning and that the impact of not defining the term potentially means that FVPSA-funded Coalitions may not be including eligible primary-purpose domestic violence service providers in their membership; or they may be including providers in membership and counting them as primary-purpose domestic violence service providers when they are not. Such confusion could lead to potential statutory non-compliance findings (regarding continued eligibility).

The commenter suggests that using the State formula grant requirements, which include funding providers of supportive services that consist of counseling, advocacy, and self-help services, to define primary-purpose domestic violence service provider, contradicts the ''primary-purpose'' membership requirement.

However, the commenter acknowledges that one of the requirements for Coalitions is to among other requirements, pursuant to FVPSA at 42 U.S.C. 10402(11), ''provide education, support, and technical assistance to such service providers to enable providers to establish and maintain shelter and *supportive services* (emphasis added) for victims of domestic violence.'' Supportive services is defined separately from shelter in FVPSA at 42 U.S.C. 10402(12) as ''services for adult and youth victims of family violence, domestic violence, or dating violence, and dependents exposed to family violence, domestic violence, or dating violence, that are designed to: (a) Meet the needs of such victims of family violence, domestic violence, or dating violence, and their dependents, for short-term, transitional, or long-term safety; *and (b) provide counseling, advocacy, or assistance for victims of family violence, domestic violence, or dating violence, and their dependents*'' (emphasis added). Therefore, we interpret the primary-purpose domestic violence service provider membership requirement as including those providers that also primarily focus on supportive services as statutorily defined above (and which is defined later in this rule). The supportive services definition specifically includes counseling, advocacy, or assistance for victims which is complementary to the State formula grant eligibility requirements that organizations providing such services may also be funded independently of shelter services and which are also to be given special emphasis for funding by States (and Tribes).

Finally, while the NPRM included a partial focus on helping to define primary purpose domestic violence service provider to complement the State formula grant priorities for funding programs that provide supportive services independently of shelter, the definition also focuses on shelter programs as part of the primary-purpose domestic violence service provider definition. Both types of programs are contemplated in the Coalition definition by identifying both shelter and supportive services, therefore the primary purpose domestic violence service provider definition is aligned with specific statutory language and intent. Pursuant to the public comments received and responses thereto, for the purpose of clarifying the term as it appears in the definition of State Domestic Violence Coalition, a primary-purpose domestic violence service provider is one that operates a project of demonstrated effectiveness carried out by a nonprofit, nongovernmental, private entity, Tribe, or Tribal organization, that has as its project's primary-purpose the operation of shelters and supportive services for victims of domestic violence and their dependents; or has as its project's primary purpose counseling, advocacy, or self-help services to victims of domestic violence. Territorial Domestic Violence Coalitions may include government-operated domestic violence projects as primary-purpose domestic violence service provider for complying with the membership requirement,

provided that Territorial Coalitions can document providing training, technical assistance, and capacity-building of community-based and privately operated projects to provide shelter and supportive services to victims of family, domestic, or dating violence, with the intention of recruiting such projects as members once they are sustainable as primary-purpose domestic violence service providers.

Secondary Prevention

Comment: One commenter suggested that NPRM preamble explanatory language be included in the rule definition to reference the kind of service that may be considered a secondary prevention example. Specifically, the commenter suggested that the definition include services for children and youth, home visiting programs for high-risk families, screening programs in health care settings, and self-defense training.

Response: We agree. Secondary prevention is defined to mean identifying risk factors or problems that may lead to future family, domestic or dating violence, and taking the necessary actions to eliminate the risk factors and the potential problem. It may include, but is not limited to, healing services for children and youth who have been exposed to domestic or dating violence, home visiting programs for high-risk families, and screening programs in health care settings.

Shelter

Comment: Three commenters suggested that *shelter* be interpreted flexibly to capture a full range of sheltering and supportive services' provision that meet the evolving housing and support needs of victims and their families. One commenter indicated that a combination of methods could be arrived at through numerous options, including scattered site housing, programs that offer a rental subsidy plus advocacy, or an emergency housing program composed of individual units that do not require individuals or families to live communally.

Response: In keeping with the recognition enunciated in § 1370.1 (above) that shelter defined as temporary refuge and supportive services is interpreted flexibly by ACF, we agree with the commenters. In response to the comment, we have included the following revised language: This definition . . . , which may include housing provision, rental subsidies, temporary refuge, or lodging in properties that could be individual units for families and individuals (such as apartments). A complete, revised shelter definition follows after additional public comments on the term are discussed.

Comment: One commenter, while supporting that shelter be interpreted flexibly to include a range of housing and supports, cautioned that the mere provision of shelter, without the additional provision of supportive services, should never allow a shelter to be FVPSA-funded, nor should it allow such a project to be considered a ''primary purpose'' organization. The commenter further explained that the provision of shelter is not simply a warm referral to another entity for shelter; it is using the organization's own resources to provide the shelter and supportive services. Under no circumstances, the commenter indicated, shall referrals alone, to shelter or housing, be considered the provision of shelter and supportive services as required by FVPSA. The commenter expressed concern that programs that offer basic shelter, without providing supportive services, such as hotel vouchers or other minimal housing services, would be able to claim that they are providing FVPSA-defined shelter.

Response: ACF's guidance to its grantees and subgrantees has always been that shelter and supportive services must both be provided when providing shelter. This requirement is already clear in the statutory definition of shelter. To be considered the provision of shelter/temporary refuge and supportive services as required by FVPSA, if a provider refers a victim to another resource for shelter, it must also ensure that the victim receives supportive services (which is defined below), either by verifying that the referral resource will provide those supportive services (by providing financial support to the referral resource if needed) or by providing supportive services itself by transporting the victim to its program for supportive services and back to the referral resource providing housing services. In response to this comment, we have revised the definition to include that temporary refuge must also provide comprehensive supportive services. Further, we included in the definition the following: The mere act of making a referral to shelter or housing shall not itself be considered provision of shelter.

Comment: The same commenter suggested that if a warm referral is made to another resource without the FVPSA-funded shelter helping to support a victim with its own resources, that it not be considered a ''primary-purpose organization.''

Response: As discussed above, the primary purpose domestic violence service provider definition is limited to clarifying the term in the Coalition definition for the membership composition of Coalitions. To the extent that a program is funded to provide shelter and supportive services but instead makes warm referrals to other resources without ensuring that a victim receives shelter and supportive services, using its own FVPSA resources if needed, such a program would not be included in a Coalition's membership for complying with the FVPSA definition of a Coalition. As indicated above, this response is meant only to apply to those situations where a FVPSA-funded shelter makes a warm referral based upon other circumstances not connected to its own lack of resources or misinterprets the shelter definition as temporary refuge alone without supportive services. If a shelter which also otherwise normally provides supportive services as required by FVPSA but is unable due to a lack of resources, such circumstances would not preclude it from being counted as a primary purpose domestic violence service provider for purposes of determining whether a Coalition is in compliance with FVPSA membership requirements. No revision to the rule text was made resulting from this comment.

Comment: A commenter indicated that FVPSA requires priority funding for the ''primary purpose'' of *operating* (emphasis added) shelters, and authorizes payment for the expenses of *operating* (emphasis added) a shelter. The commenter also said that the NPRM's proposed expanded definition of shelter includes a provider that does not operate a shelter, but may have vouchers for various residences, including hotels/motels that are unregulated and may not be confidential or secure locations to protect the safety of victims and children. The commenter suggested that the expanded definition conflicts with FVPSA requirements because the statute provides that a State give special emphasis to the support of community based projects of demonstrated effectiveness carried out by nonprofit private organizations that have as their ''primary purpose'' the operation of shelters for victims of family violence, domestic violence, and dating violence and their dependents. The commenter also pointed out that FVPSA defines shelter as temporary refuge and supportive services in compliance with *applicable State law (including regulation)* (emphasis added) governing the provision, on a regular

basis of shelter, safe homes, meals and supportive services to victims of family, domestic, or dating violence, and their dependents.

Response: The commenter conflates the FVPSA requirements regarding the priority for the ''operation'' of shelters and the authorization to use funds for shelter operations to mean that only a limited type of shelter may be funded where a provider must only house victims in a building directly operated by a FVPSA subgrantee; this is not the case. While FVPSA certainly prioritizes the operation of shelter by community-based non-profit organizations of demonstrated effectiveness, temporary refuge is not defined in the FVPSA's shelter definition. Therefore, ACF is using its authority to promulgate guidance for the effective administration of the program to identify some of the potential variations of shelter, defined as temporary refuge and supportive services that meet the needs of all victims as well as the statute's intent. Given that shelters are often at capacity throughout the country and that nearly 11,000 [3] people are turned away daily from shelters either because the shelters are full or do not have adequate shelter staffing, it is unreasonable to expect that all domestic violence victims seeking shelter in every State, territory, or Tribe/Tribal organization will be housed in one kind of shelter facility operated 24 hours a day, 365 days a year. It is also reported that there are some individuals from underserved populations and culturally- and linguistically-specific populations who cannot or choose not to access domestic violence shelters, either because they fear disparate treatment by the residents themselves, do not feel comfortable living in congregate housing, or because shelters with limited resources do not seem to have the capacity or expertise to provide welcoming and accessible services to every individual at all times. While ACF requires that all individuals have access to FVPSA-funded shelter, the reality is that not all victims want to be served in domestic violence shelters. Therefore, ACF interprets temporary refuge to include shelter options with flexibility. While ACF expects that States and Tribes will fund programs based upon the statutory requirements to prioritize community based projects of demonstrated effectiveness carried out by nonprofit private organizations having as their primary purpose the operation of shelters for victims, it does not expect that one size will fit all in every community or that every community will have domestic violence shelter capacity to serve everyone seeking shelter and supportive services. However, pursuant to FVPSA, eligible entities must have a documented history of effective work concerning family, domestic, or dating violence. Therefore, regarding shelter, States and Tribes must fund programs that provide shelter and supportive services with the required demonstrated expertise which may house victims using various shelter options as described in this rule's revised shelter definition.

Additionally, the commenter identified that the FVPSA shelter definition requires that shelter and supportive services be provided on *a regular basis* (emphasis added) in compliance with *applicable State [and Tribal] law and regulations* (emphasis added); the commenter is correct. Therefore, State and Tribal law governing the provision of shelter and supportive services on a *regular basis* (emphasis added) is interpreted by ACF to mean, for example, the laws and regulations applicable to zoning, fire safety, and other regular safety, and operational requirements, including State, Tribal, or local regulatory standards for certifying domestic violence advocates who work in shelter. The rule text is revised to reflect ACF's interpretation in this regard.

Regarding the commenters concern about shelter location confidentiality, as it applies to using hotels or motels as potential shelter/temporary refuge options, FVPSA at 42 U.S.C. 10406(c)(5)(H), does not require that all shelters be confidential. The statute reads, ''the address or location of any shelter facility assisted under this title that otherwise maintains a confidential location, except with written authorization of the person or persons responsible for operation of such shelter, not be made public.'' The statutory language is unambiguous and does not require that shelter locations be confidential, but rather that if they maintain a confidential location the location cannot be made public without written leadership authority. The commenter's concerns about the potential lack of confidentiality in shelter services provided by motels or hotels connected to a shelter's referral and placement of a victim there are legitimate. However, FVPSA does not require shelters, and therefore their referral sites or contactors, to be confidential. The safety and security of victims and their dependents are paramount and therefore shelters and other FVPSA-funded programs are prohibited from revealing PII. The commenter's additional concern regarding the placement of victims in unregulated hotels or motels is also legitimate. If FVPSA-funded shelters use hotels or motels as a means of sheltering victims, PII cannot be shared unless the victim signs an informed, time-limited release per FVPSA and this rule at § 1370.4. If shelters and hotels/motels enter into contracts to temporarily house victims, PII cannot be shared. Additionally, all FVPSA-funded shelters that use hotels, motels, or other housing options as shelter must also provide supportive services either at the FVPSA-funded primary shelter location by transporting victims from hotels to shelter or by providing supportive services on-site at hotels, motels, etc.

Comment: One commenter indicated that the inclusion of ''scattered-site housing'' in the shelter definition might be interpreted to be limited to housing, owned, operated, or leased by a domestic violence program, when, in fact, as the commenter indicated the goal should be to include any properties or assistance that FVPSA-funded programs use for shelter provision. The commenter suggested striking the term ''scattered-site housing'' and replacing it with ''the provision of housing, temporary refuge or lodging in properties that could be in multiple locations around a State or local jurisdiction; such properties are not required to be owned, operated, leased by the FVPSA-funded program.''

Response: We agree. The inclusion of ''scattered-site housing'' was not intended to be interpreted the way the commenter is concerned it could be. Therefore, the proposed revision is incorporated into the rule definition.

As a result of the comments made regarding the shelter definition, shelter is re-defined as: The provision of temporary refuge in conjunction with supportive services in compliance with applicable State or Tribal law or regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and supportive services to victims of family violence, domestic violence, or dating violence, and their dependents. State and Tribal law governing the provision of shelter and supportive services on a regular basis is interpreted by ACF to mean, for example, the laws and regulations applicable to zoning, fire safety, and other regular safety, and operational requirements, including State, Tribal, or local regulatory standards for certifying domestic violence advocates who work in shelter. This definition also includes emergency shelter and immediate shelter, which may include housing provision, short-term rental assistance,

[3] National Network to End Domestic Violence, Domestic Violence Counts 2014, a 24-Hour Census of Domestic Violence Shelter and Services.

temporary refuge, or lodging in properties that could be individual units for families and individuals (such as apartments) in multiple locations around a local jurisdiction, Tribe/reservation, or State; such properties are not required to be owned, operated, or leased by the program. Temporary refuge includes a residential service, including shelter and off-site services such as hotel or motel vouchers or individual dwellings, which is not transitional or permanent housing, but must also provide comprehensive supportive services. The mere act of making a referral to shelter or housing shall not itself be considered provision of shelter. Should other jurisdictional laws conflict with this definition of temporary refuge, the definition which provides more expansive housing accessibility governs.

State Domestic Violence Coalition

Comment: One commenter suggested for clarity that the purpose of State Domestic Violence Coalition be revised to help support and connect the primary-purpose domestic violence service provider membership requirement to the Coalition definition.

Response: We agree. To ensure that the rule definition includes clear statutory purpose requirements which logically connect to membership requirements, we have revised the definition to include language that the State Domestic Violence Coalition ''has as its purpose to provide education, support, and technical assistance to such service providers to enable the providers to establish and maintain supportive services and to provide shelter to victims of domestic violence and their children.'' We have also made a technical correction to reference ''Territory'' in the last sentence of the definition.

The revised definition is: State Domestic Violence Coalition means a Statewide, nongovernmental, nonprofit 501(c)(3) organization whose membership includes a majority of the primary-purpose domestic violence service providers in the State; whose board membership is representative of these primary-purpose domestic violence service providers and which may include representatives of the communities in which the services are being provided in the State; that has as its purpose to provide education, support, and technical assistance to such service providers to enable the providers to establish and maintain supportive services and to provide shelter to victims of domestic violence and their children; and that serves as an information clearinghouse, primary point of contact, and resource center on domestic violence for the State and supports the development of policies, protocols, and procedures to enhance domestic violence intervention and prevention in the State/Territory.

Supportive Services

Comment: Two commenters suggested changes to the proposed *supportive services* definition to ensure that grantees and subgrantees are clear the allowable uses of grant funds. One of the commenters suggested that by including a list of allowable uses as proposed in the NPRM, and even though the list as articulated is non-exhaustive, it is confusing for grantees and subgrantees by tending to de-emphasize the importance of other allowable funds' uses. This commenter suggested that the NPRM definition be clarified to include that supportive services specifically reference those services identified as allowable in FVPSA at 42 U.S.C. 10408(b)(1)(A) through (H). Another commenter suggested that by leaving potential allowable uses off the list, some might interpret the rule to mean that HHS does not favor other allowable uses not specifically referenced or that other uses are not allowable. Both commenters suggested that additional allowable uses be added to the list provided in the NPRM definition to focus or emphasize terms not in the statute or for those already in the statute to deemphasize those that are not generally consistent with best practices that center survivor well-being, agency, and autonomy. One of these commenters also suggested that certain terms identified in FVPSA at 42 U.S.C. 10408(b)(1)(A) through (H) be further defined.

Response: We agree in part. FVPSA provides for supportive services targeted directly to the needs of victims for safety and assistance in reclaiming their agency, autonomy, and well-being. To help ensure that the rule does not confuse grantees and subgrantees, we have revised the definition to reference FVPSA at 42 U.S.C. 10408(b)(1)(A) through (H), instead of only paragraph (G).

As to the suggestions made to add other allowable funds' uses or to emphasize or deemphasize other uses, or to add definitions to certain terms listed in FVPSA at 42 U.S.C. 10408(b)(1)(A) through (H), we note Congress' specific statutory language and intent as well as HHS' interim final rule, codifed at 45 CFR part 75, ''*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards,*'' which provides additional grant guidance for determining allowable costs.

Supportive services is revised to mean services for adult and youth victims of family violence, domestic violence, or dating violence, and their dependents that are designed to meet the needs of such victims and their dependents for short-term, transitional, or long-term safety and recovery. Supportive services include, but are not limited to: Direct and/or referral-based advocacy on behalf of victims and their dependents, counseling, case management, employment services, referrals, transportation services, legal advocacy or assistance, child care services, health, behavioral health and preventive health services, culturally- and linguistically-appropriate services, and other services that assist victims or their dependents in recovering from the effects of the violence. To the extent not already described in this definition, supportive services also include but are not limited to other services identified in FVPSA at 42 U.S.C. 10408(b)(1)(A) through (H). Supportive services may be directly provided by grantees/subgrantees and/or by providing advocacy or referrals to assist victims in accessing such services. We also made a technical correction to the list of supportive services to include linguistically-appropriate services to ensure access for beneficiaries with limited English proficiency and to help ensure grantee/sub-grantee compliance with Federal civil rights requirements.

Underserved Populations

Comment: One commenter said that the ''underserved populations'' definition includes racial and ethnic minority populations which has been included to mean primarily directed toward racial and ethnic minority groups (as defined in section 1707(g) of the Public Health Service Act (42 U.S.C. 300(u–6)(g)). The commenter further identified that (g) includes, ''(1) the term ''racial and ethnic minority group'' means American Indians (including Alaska Natives, Eskimos, and Aleuts); Asian Americans; Native Hawaiians and other Pacific Islanders; Blacks and Hispanics; and (2) the term ''Hispanic'' means individuals whose origin is Mexican, Puerto Rican, Cuban, Central or South American, or any other Spanish-speaking country.'' The commenter said that inclusion of these definitions would underscore the specific needs of survivors from racial and ethnic populations who are often overrepresented in some systems as a result of systemic oppression but remain marginalized and often underserved. The commenter also suggested that since decisions about how to prioritize

funding for underserved populations including racial and ethnic populations are made at the State level, these processes can be subject to prevailing biases about these populations. The commenter identified that States frequently struggle to prioritize some of the most marginalized or maligned communities, such as LGBTQ or immigrant (including undocumented immigrants) communities, or to account for the multiple systemic barriers to safety and autonomy for victims from racial and ethnic populations.

Response: Our experience is that not only do States have the challenges identified by the commenter but many other kinds of grantees and subgrantees also experience similar hurdles, often because of population changes that are hard to track, or because underserved populations are sometimes uncomfortable accessing services which may not be welcoming and accessible. We agree with the commenter. As a result, the underserved populations' definition is revised in § 1370.2 to include the definitions of racial and ethnic minority groups as defined by the Public Health Service Act. Additionally, a technical change is made to this definition to substitute the terminology ''substance abuse'' with ''substance use disorders.'' The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM–5), no longer uses the term ''substance abuse'' but rather refers to ''substance use disorders''. In efforts to promote consistent terminology, the language is updated. Underserved populations is revised to mean, populations who face barriers in accessing and using victim services, and includes populations underserved because of geographic location, religion, sexual orientation, gender identity, underserved racial and ethnic populations, language barriers, disabilities, immigration status, and age. Individuals with criminal histories due to victimization and individuals with substance use disorders and mental health issues are also included in this definition. The reference to racial and ethnic populations is primarily directed toward racial and ethnic minority groups (as defined in section 1707(g) of the Public Health Service Act (42 U.S.C. 300(u–6)(g)), which means American Indians (including Alaska Natives, Eskimos, and Aleuts); Asian Americans; Native Hawaiians and other Pacific Islanders; Blacks and Hispanics. The term ''Hispanic'' or ''Latino'' means individuals whose origin is Mexican, Puerto Rican, Cuban, Central or South American, or any other Spanish-speaking country. This underserved populations' definition also includes other population categories determined by the Secretary or the Secretary's designee to be underserved.[4]

Section 1370.3 What Government-wide and HHS-wide regulations apply to these programs?

We received no public comments for this section and therefore, the proposed regulatory text is retained without change.

Section 1370.4 What confidentiality requirements apply to these programs?

Comment: One commenter suggested that due to requirements in the Affordable Care Act regarding health insurance coverage of health care provider screening for inter-personal violence with no cost sharing (for women of child-bearing age), and since there has been and will continue to be an increase in FVPSA-funded grantees and subgrantees who partner with or may seek funding from health care providers, that this rule cross-reference VAWA at 42 U.S.C. 13925(b)(2)(D)(ii) prohibiting grantees and subgrantees from conditioning the provision of services upon the agreement to share PII. The commenter identified the specific VAWA language as: ''(ii) In no circumstances may (I) an adult, youth, or child victim of domestic violence, dating violence, sexual assault, or stalking be required to provide a consent to release his or her personally identifying information as a condition of eligibility for the services provided by the grantee or sub grantee; (II) any personally identifying information be shared in order to comply with Federal, Tribal, or State reporting, evaluation, or data collection requirements, whether for this program or any other Federal, Tribal, or State grant program.'' The commenter also believes that the NPRM preamble language regarding the occasional subgrantee practice to standardize releases conflates ''waivers'' and ''releases'' and may add confusion about how to standardize or not standardize releases.

Response: We agree in part. There is a trend for FVPSA-funded grantees and subgrantees to partner with or seek funding from health care providers to screen for interpersonal violence. As a result, the proposed VAWA reference is added to the rule language in § 1370.4(a) to read: (1) Disclose any personally identifying information (as defined in § 1370.2) collected in connection with services requested (including services utilized or denied) through grantees' and subgrantees' programs; (2) Reveal any personally identifying information without informed, written, reasonably time-limited consent by the person about whom information is sought, whether for this program or any other Federal, Tribal or State grant program, including but not limited to whether to comply with Federal, Tribal, or State reporting, evaluation, or data collection requirements; or (3) Require an adult, youth, or child victim of family violence, domestic violence, and dating violence to provide a consent to release his or her personally identifying information as a condition of eligibility for the services provided by the grantee or subgrantee.

Finally, we respectfully disagree that the NPRM preamble discussion of standardizing releases conflates waivers and releases. We will not address this issue further in this rule as the NPRM preamble language is not repeated in this rule.

Comment: One commenter also indicated that subgrantees are partnering with or may seek funding from health care providers, suggests that § 1370.4(d) of the rule add a fourth section as follows: Personally identifying information may be shared with a health care provider or payer, but only with the informed, written, reasonably time-limited consent of the person about whom such information is sought.''

Response: We agree. Since subgrantees are currently working with and are anticipated to enter into partnerships with health care providers, the potential for revealing PII is possible, and would be a FVPSA and VAWA violation unless a victim provides the necessary release required by law. As a result a fourth paragraph is added to § 1370.4(d) to read: *(*d)(4) Personally identifying information may be shared with a health care provider or payer, but only with the informed, written, reasonably time-limited consent of the person about whom such information is sought.

Comment: One commenter opposes the inclusion of § 1370.4(d)(1) through (3) because it would prevent them from operating a shelter in the same building as a police department.

Response: The proposed language in the NPRM found in § 1370.4(d)(1)

[4] As noted in other places throughout the rule, § 1370.10 for example, ''underserved populations'' is the terminology used in the rule text to address all populations in the term's definition to avoid confusion by listing different populations or groups in different sections of the rule. For example, in the NPRM preamble and rule text, commenters noted inconsistency throughout which named specific groups in some places and not in others. ACF has decided that consistent use of ''underserved populations'' eliminates the potential for confusion in this regard.

through (3) is a direct restatement of FVPSA statutory requirements at 42 U.S.C. 10406(c)(5)(D). The commenter would be in violation of FVPSA and this rule if PII is shared between the shelter and police department unless such information sharing is done in compliance with specific exceptions enunciated in FVPSA and this rule. We strongly urge this commenter to seek technical assistance from the appropriate Resource Center identified in § 1370.30 of this rule or in FVPSA at 42 U.S.C. 10410.

Comment: One commenter said that the requirement in § 1370.4(b) requiring that both the minor and parent consent to disclosures of information will not be feasible if the minor is a very young child. The commenter indicated that it is not clear whether a child in this situation has a ''functional limitation'' referred to in the last sentence of § 1370.4(b). The commenter suggested that an age reference be included in the sentence. Additionally, the commenter suggested that this provision is problematic in cases where unemancipated teens seek services without a parent or guardian. The commenter suggested that the VAWA provision at 42 U.S.C.13925(b)(2)(B) be included which reads: ''If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may release information without additional consent.''

Response: We respectfully disagree in part. We interpret the provision in § 1370.4(b) which requires both the consent of the unemancipated minor and parent to indicate that if the child is too young to be emancipated under State law that the State's law addressing whether a parent may consent for or on behalf of the child will apply in those circumstances. There is no need to include an age requirement because many States' laws address a child's right to act on his or her behalf without the consent of a parent or guardian and most notably, parental consent is usually needed on behalf of unemancipated minors and may often be obtained without the consent of the minor. Additionally, § 1370.4(b) includes that ''a parent or guardian may not give consent if: He or she is the abuser or suspected abuser of the minor or individual with a guardian; or the abuser or suspected abuser of the other parent of the minor. Therefore, a parent or guardian of a young child may consent for or on behalf of the child pursuant to State law as long as the parent or guardian is not the suspected abuser; or, the abuser or suspected abuser of the other parent of the minor according to § 1370.4(b). Finally, the commenter's suggestion to reference the VAWA provision for situations where unemancipated teens seek services without a parent or guardian is persuasive. Therefore, the rule in § 1370.4(b) is revised by adding after the second sentence, the following: If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may release information without additional consent.

Comment: One commenter recommended that the rule be revised to recognize the right and duty of State licensing agencies to inspect un-redacted client identifiable records as part of a State's statutory and regulatory monitoring responsibilities, including investigating program complaints and child abuse and neglect reports.

Response: We did not make changes to the rule in response to this comment. FVPSA at 42 U.S.C. 10406(c)(5)(B) and this rule at § 1370.4(a)(1) and (2) state that grantees and subgrantees shall not disclose any PII collected in connection with services requested through grantees' and subgrantees' programs or reveal any PII without informed, written, reasonably time-limited consent, whether for the FVPSA grant program or any other Federal or State grant program. FVPSA and this rule (in the same sections noted above) also require that if the release of PII (in connection with services) is compelled by statutory or court mandate, that grantees and subgrantees shall make reasonable attempts to provide notice to the victims affected by the release and shall take steps necessary to protect the privacy and safety of the persons affected by the release of information. A State or Tribal grantee does not have the authority under FVPSA to view any PII of any victim/survivor of domestic or dating violence that receives services from a FVPSA-funded program to monitor the quality or quantity of services provided, or for any other reason except under very limited circumstances to fulfill other statutory or court mandates. Safety and confidentiality protections for victims pursuant to FVPSA prevent States and Tribes from monitoring subgrantees/sub-contractors for licensing or any other reasons if monitoring or other reviews include the collection, inspection, or other access to PII. States and Tribes may ensure that quality services are provided and prevent alleged fraud as long as they do not view or collect PII. There are many States and Coalitions that have developed policies and protocols to monitor local domestic violence programs without requiring PII disclosure. PII must be redacted or the client must provide the appropriate written, time-limited release and such release must not be a condition for receipt of services nor should victims be compelled to sign releases. State or Tribal statutorily required reports of child abuse and neglect made by FVPSA-funded programs are limited to the information necessary to make the report. Subsequent investigations of allegations of child abuse and neglect are limited to viewing only the information related specifically to the investigation and must be either statutorily required or court mandated.

Comment: One commenter suggested that rule § 1370.4(e) be revised to read (proposed language changes are bolded), ''Nothing in this section prohibits a grantee or subgrantee from reporting abuse and neglect, as those terms are defined by law, or disclosure without the consent of the victim if failure to disclose is likely to result in imminent risk of serious bodily injury or death of the victim or another person, where mandated or expressly permitted by the State or Indian Tribe involved.''

Response: We agree with the commenter with the exception of including the language ''or disclosure without the consent of the victim'' because State and Tribal imminent harm laws may differ and ACF does not want the rule text to create potential conflicts with State or Tribal laws. ACF did not intend for the NPRM to abrogate State or Tribal imminent harm reporting laws (see 42 U.S.C. 10406(c)(5)(G) which addresses Federal, State and Tribal law preemption issues for laws that provide greater protection). Therefore, § 1370.4(e) is revised to read: Nothing in this section prohibits a grantee or subgrantee, where mandated or expressly permitted by the State or Indian Tribe, from reporting abuse and neglect, as those terms are defined by law, or from reporting imminent risk of serious bodily injury or death of the victim or another person.

Comment: Two commenters asked that it be reemphasized that shelter locations do not have to be confidential per FVPSA requirements and this rule in § 1370.4(g). They also stated that with the advent of technology, including the proliferation of databases and relatively easy internet searches for people that it is most likely impractical or impossible to keep shelter locations confidential. They also recommended that this rule include guidance, for those shelters that choose to remain confidential, that such shelters may refuse to enter location

information into public databases or databases easily accessible to the public, such as 311 databases. The commenters also suggested that this rule advise programs to develop systems and protocols for keeping locations secure, if they choose to maintain program confidentiality, and for responding to disruptive or inappropriate contact from abusers. One of the commenters suggested that the rule emphasize the importance of continued reliance on the local expertise of individual Tribes to determine how to best maintain the safety and confidentiality of shelter locations.

Response: It is not within the purview of this rule to declare whether shelters which choose to remain confidential may refuse to enter location information into databases that may be required by State or local law. FVPSA and this rule, as recognized by both commenters, allow shelters to decide whether or not they want to be confidential locations; as such, ACF has determined that it would be a contradiction to regulate whether shelters enter data into public databases when they may also choose not to be confidential locations.

We agree that shelters which choose to be confidential must develop policies and protocols, if not already in place, to remain secure and must include policies for responding to disruptive or inappropriate contact from abusers. Based on Tribal sovereignty and their unique culture and customs, we also agree that it is appropriate to defer to Tribal governments' local expertise on how best to maintain the confidentiality and safety of shelter locations provided they exercise due diligence to comply with FVPSA requirements in this regard. Therefore, two additional subsections are added to § 1370.4(g) which will read: (1) Shelters which choose to remain confidential pursuant to this rule must develop and maintain systems and protocols to remain secure, which must include policies to respond to disruptive or dangerous contact from abusers and (2) Tribal governments, while exercising due diligence to comply with statutory provisions and this rule, may determine how best to maintain the safety and confidentiality of shelter locations.

Section 1370.5 What additional non-discrimination and accessibility requirements apply to these programs?

Comment: A number of commenters encouraged ACF to explicitly prohibit discrimination based on sexual orientation and gender identity in FVPSA-funded programs. Two commenters argued that ACF should interpret prohibitions against sex discrimination in FVPSA, the overarching Civil Rights laws, and other Federal statutes to include prohibitions on the basis of sexual orientation and gender identity.

Response: FVPSA prohibits discrimination and the failure to serve survivors based on their actual or perceived sexual orientation or gender identity. We have revised the regulatory text of § 1370.5 to better reflect that position. ACF recognizes that discrimination based on actual or perceived gender identity is sex based discrimination. This is consistent with the way that discrimination based on actual or perceived gender identity is treated under civil rights laws. Failure to serve individuals based on their actual or perceived sexual orientation is a violation of FVPSA because all victims of family violence, domestic violence, and dating violence should have access to FVPSA-funded programs. ACF recognizes sexual orientation discrimination as a programmatic prohibition and will enforce that requirement through all available programmatic means. As such, rule text at § 1370.5(c) is revised to read: (c) No person shall on the ground of actual or perceived sexual orientation be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part through FVPSA.

Additionally, rule text at § 1370.5(f) is changed to read: (f) Nothing in this section shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals under other applicable law. (g) The Secretary shall enforce the provisions of paragraphs (a) and (b) of this section (as also revised below) in accordance with section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1). Section 603 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2) shall apply with respect to any action taken by the Secretary to enforce this section.

Comment: Commenters suggested better ways to describe the requirement that families be housed together. Commenters noted that the reference only to survivors' sons was too narrow and made other suggestions for the language in this provision.

Response: We agree. As a general matter, families should be housed together, without regard to the sex of the children, as segregating children from their parents compromises' parents ability to supervise their children and can add to the trauma both parents and children have experienced or are experiencing. Additionally, in most cases, if feasible, it is a best practice for families to have their own bedrooms and bathrooms. For example, unless the factors or considerations identified in § 1370.5(a)(2) require an exception to this general rule, mothers should be housed with their sons to prevent trauma beyond violence-related impacts, unless there are factors which would make such placements inappropriate. Fathers should also be housed with their daughters to avoid continued trauma unless there are factors, (*i.e.* safety and health of families and residents) that would make such placements inappropriate. Therefore, rule text in § 1370.5 will read: (a) No person shall on the ground of actual or perceived sex, including gender identity be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part through FVPSA. (1) FVPSA grantees and subgrantees must provide comparable services to victims regardless of actual or perceived sex, including gender identity. This includes not only providing access to services for male victims of family, domestic, and dating violence, but also making sure not to limit services for victims with adolescent children (up to the age of majority) on the basis of actual or perceived sex, including gender identity. Victims and their minor children must be sheltered or housed together, regardless of actual or perceived sex, including gender identity, unless requested otherwise or unless the factors or considerations identified in § 1370.5(a)(2) require an exception to this general rule.

Comment: Commenters noted that the proposed rule regarding sex-segregation was too broad or unclear and suggested that, if all victims/survivors are to be afforded services and protections under FVPSA, the rule text needs to be more narrowly tailored. Two commenters encouraged ACF to adopt the VAWA standard. One commenter said that as currently written, this section potentially leaves a significant portion of LGBTQ populations, namely male identified survivors vulnerable to continued domestic or dating violence by not ensuring access to essential FVPSA-funded services. Other commenters suggested specific language to clarify the rule while recognizing the importance sex segregation can play in the sensitive residential situations and services provision funded under FVPSA. In that vein, another commenter suggested that challenges related to access are connected to the loss of privacy that every resident faces in communal living environments; that

loss of privacy becomes more visible when residents are representative of both sexes, multiple sexual orientations, or multiple gender identities. One other commenter suggested that sex-segregated services should be maintained to foster healing and respect religious beliefs.

Response: We agree with the commenters that this section needed to be clarified. We want to stress the importance of promoting environments that are both inclusive and safe. As one of the comments noted, we want to ensure that all men and women, including transgender and gender nonconforming individuals, have access to FVPSA-funded services. We also note in response to one particular commenter that heterosexual and transgender male victims, as well as gender non-binary individuals, who identify with a gender other than male or female, may also be vulnerable to continued domestic or dating violence by not ensuring access to essential FVPSA-funded services. At the same time, we understand that sex-segregated services may need to be maintained under certain circumstances as part of the essential operation of a FVSPA-funded program. When this happens, all individuals must be treated consistent with their gender identity when determining placement in sex-segregated facilities or services. Therefore, we revised the rule text in this section to address the first part of the comment and the revisions to rule text in § 1370.5(c) address the second part of the comment. As a result, the rule text is revised to include part of the language from the Department of Justice, Office on Violence Against Women FAQ (Frequently Asked Questions) document published on April 9, 2014 regarding the Nondiscrimination Grant Condition in VAWA Reauthorization 2013. Additionally, FVPSA State Administrators are often the same State administering agencies for VAWA grant funds. As such, to avoid potential confusion and uncertainty in the field, as well as to ensure accessibility to FVPSA-funded programs for all victims, § 1370.5(b) is re-designated and revised to read: (a)(2) No such program or activity is required to include an individual in such program or activity without taking into consideration that individual's sex in those certain instances where sex is a bona fide occupational qualification or a programmatic factor reasonably necessary to the normal or safe operation of that particular program or activity. If sex segregation or sex-specific programming is essential to the normal or safe operation of the program, nothing in this paragraph shall prevent any such program or activity from consideration of an individual's sex. In such circumstances, grantees and subgrantees may meet the requirements of this paragraph by providing comparable services to individuals who cannot be provided with the sex-segregated or sex-specific programming, including access to a comparable length of stay, supportive services, and transportation as needed to access services. If a grantee or subgrantee determines that sex-segregated or sex-specific programming is essential for the safe or normal operation of the program, it must support its justification with an assessment of the facts and circumstances surrounding the specific program, including an analysis of factors discussed in paragraph (3) below, and take into account established field-based best practices and research findings, as applicable. The justification cannot rely on unsupported assumptions or overly-broad sex-based generalizations. An individual must be treated consistent with their gender identity in accordance with this section. (a)(3) Factors that may be relevant to a recipient's evaluation of whether sex-segregated or sex-specific programming is essential to the normal or safe operations of the program include, but are not limited to, the following: The nature of the service, the anticipated positive and negative consequences to all eligible beneficiaries of not providing the program in a sex-segregated or sex-specific manner, the literature on the efficacy of the service being sex-segregated or sex-specific, and whether similarly-situated grantees and subgrantees providing the same services have been successful in providing services effectively in a manner that is not sex-segregated or sex-specific. A grantee or subgrantee may not provide sex-segregated or sex-specific services for reasons that are trivial or based on the grantee's or subgrantee's convenience.

Comment: Commenters suggested the language regarding accessibility of FVPSA-funded services for transgender survivors be clarified.

Response: We agree that additional clarification is needed. It is important that accessibility be consistent with equal access based upon a person's gender identity, whether one identifies as a man or woman, is transgender, or is gender-nonconforming. The gender identity of non-binary individuals who identify with a gender other than male or female must also be considered in programming. It is only in this narrow circumstance that program staff should make case by case decisions with regard to placement in sex-specific or sex-segregated programs. Therefore, a fourth sub-paragraph added to the rule text at § 1370.5(a)(4) which reads: (4) Transgender and gender nonconforming individuals must have equal access to FVPSA-funded shelter and nonresidential programs. Programmatic accessibility for transgender and gender nonconforming survivors must be afforded to meet individual needs to the same extent as those provided to all other survivors. ACF requires that a FVPSA grantee or subgrantee that makes decisions about eligibility for or placement into single-sex emergency shelters or other facilities must offer every individual an assignment consistent with their gender identity. For the purpose of assigning a service beneficiary to sex-segregated or sex-specific services, the grantee/subgrantee may ask a beneficiary which group or services the beneficiary wishes to join. The grantee/subgrantee may not, however, ask questions about the beneficiary's anatomy or medical history or make demands for identity documents or other documentation of gender. A victim's/beneficiary's or potential victim's/beneficiary's request for an alternative or additional accommodation for purposes of personal health, privacy, or safety must be given serious consideration in making the placement. For instance, if the potential victim/beneficiary requests to be placed based on his or her sex assigned at birth, ACF requires that the provider place the individual in accordance with that request, taking into account the health, safety, and privacy concerns of the individual. ACF also requires that a provider will not make an assignment or re-assignment of the transgender or gender nonconforming individual based on complaints of another person when the sole stated basis of the complaint is a victim/client or potential victim/client's non-conformance with gender stereotypes or gender identity.

Comment: Commenters suggested that, in addition to the provisions requiring religious accommodation in dietary practices, a more general statement regarding religious accommodation should be included.

Response: We agree. Therefore, consistent with the HHS-wide regulations found in 45 CFR parts 87, the FVPSA rule text in § 1370.5(d) is re-designated and revised to read: (b) An organization that participates in programs funded through the FVPSA shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a

religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. (1) Dietary practices dictated by particular religious beliefs may require some reasonable accommodation in cooking or feeding arrangements for particular beneficiaries as practicable. Additionally, other forms of religious practice may require reasonable accommodation including, but not limited to, shelters that have cleaning schedules may need to account for a survivor's religion which prohibits him/her from working on religious holidays. All grantees/recipients of funding subject to FVPSA and this rule at § 1370.5(a) and (c), accept the obligation, as a condition of a grant or subgrant/sub-contract, not to discriminate in the delivery of services or benefits supported by covered awards, on the basis of actual or perceived sex, including gender identity or sexual orientation.

Comment: A commenter noted the requirement regarding documentation as it related to accessibility for immigrant survivors was confusing and as written could be confused to prohibit collection of information ensuring individuals seeking FVPSA-funded services were victims of family violence, domestic violence, or dating violence. Another commenter suggested that additional language be added to the rule text at § 1370.5(e) to include ''grantees and subgrantees shall also comply with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.'' A final commenter suggested that the language in rule text § 1370.30(c)(1) and (2) regarding the addition of the requirements in the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, including the language addressing access for the Limited English Proficient (LEP) using interpretation and translation services and access for individuals with communication-related disabilities, be included in a section that applies to a larger number of grantees beyond technical assistance providers and resource centers (this request and response is cross-referenced in § 1370.30(c)(1) and (2)).

Response: We respectfully disagree, in part. FVPSA-funded programs may collect personally identifying information for the purpose of being able to provide services to the victim. However, citizenship documentation is not required to provide services to an individual. Additionally, FVPSA data collection reporting requirements do not include personally identifying information. Personal identity or citizenship documentation is not collected as part of quantitative data gathering regarding services provided by FVPSA-funded programs. ACF, in the FVPSA Performance Progress Reports, only requires that grantees and subgrantees report aggregate demographic data and include a count of the various FVPSA-funded services provided by grantees and subgrantees; no identity or citizenship documents need to be accessed for this information.

We also added a new section 1370.5(e) to clearly assert that all grantees and subgrantees shall create a plan to ensure effective communication and equal access, including: (1) How to identify and communicate with individuals with Limited English Proficiency, and how to identify and properly use qualified interpretation and translation services, and taglines; and (2) How to take appropriate steps to ensure that communications with applicants, participants, beneficiaries, members of the public, and companions with disabilities are as effective as communications with others; and furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, beneficiaries, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity. Auxiliary aids and services include qualified interpreters and large print materials.

Comment: One commenter suggested that the proposed rule text in § 1370.5(d) regarding FVPSA-funded programs serving human trafficking victims be completely stricken because Congress did not authorize it in the legislation. The commenter also stated that nationally, nearly 11,000 victims of domestic violence are turned away daily and it is impossible to prioritize victims of domestic and intimate partner violence over victims of human trafficking when service providers cannot provide services to all victims of family, domestic, and dating violence. The commenter also indicated that even without the proposed rule language, victims of family, domestic, and dating violence who are also human trafficking victims will continue to receive services from FVPSA-funded providers and appropriate referrals for services related to human trafficking. Another commenter identified that many domestic violence programs serve human trafficking victims if their missions encompass such services and/or when other services are simply not available. The commenter suggested that FVPSA-funded programs cannot be seen as the ''solution'' to sheltering and serving human trafficking victims who are not also domestic violence victims. The commenter repeated statistics about unserved domestic violence victims on a daily basis and stated that FVPSA-funded programs turn away approximately 160,000 domestic violence victims annually because programs do not have the capacity to meet needs. The commenter suggested a language change to allow provider discretion in serving human trafficking victims who are not domestic violence victims. An additional commenter suggested that requiring domestic violence service providers to serve human trafficking victims is beyond the scope of and inconsistent with FVPSA. They suggested that the expectations are unduly burdensome on staff and that the requirement will create mission drift for many FVPSA-funded organizations. The final commenter suggested that the proposed rule text be moved to § 1370.10 addressing State and Tribal formula grant applications because placing it alongside anti-discrimination provisions is confusing. The commenter made additional suggestions for screening, eligibility and creating case plans to serve human trafficking victims but also emphasized that FVPSA-funded providers can serve human trafficking victims provided domestic violence victims are prioritized and that States and Tribes be required to support programs which have the capacity to do the work.

Response: FVPSA does not specifically identify human trafficking victims as a service population; however, there is no statutory language that prevents such service provision in the context of serving family, domestic, or dating violence victims who may also be victims of human trafficking. Human trafficking, as described in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102), often simultaneously occurs in the context of intimate relationships between perpetrators of trafficking/domestic violence or dating violence and those who are victimized by such crimes. In the spirit of the Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013–2017, FVPSA-funded programs are strongly encouraged to safely screen for and identify victims of human trafficking who are also victims or survivors of domestic violence or dating violence and provide services that support their unique needs. Given Administration priorities as enunciated in the *Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013–2017,* the NPRM preamble and

regulatory text provided sub-regulatory guidance that FVPSA services can also support human trafficking victims who are not experiencing domestic or intimate partner violence *as long as victims and survivors of domestic/intimate partner violence are prioritized first by FVPSA grantees/sub-grantees* (emphasis added). However, as a result of the public comments indicating that this language will confuse grantees and subgrantees and that serving human trafficking victims who are not victims of domestic or dating violence goes beyond FVPSA's specific language and intent, ACF has revised its guidance to reflect that FVPSA funds may be used to serve victims who experience co-occurring domestic or dating violence and human trafficking. To clarify, we added a new paragraph (d) to § 1370.10 to read: Given the unique needs of victims of trafficking, FVPSA-funded programs are strongly encouraged to safely screen for and identify victims of human trafficking who are also victims or survivors of domestic violence or dating violence and provide services that support their unique needs. Human trafficking victims who are not also domestic or dating violence victims may be served in shelter and non-residential programs provided other funding mechanisms, such as funds from other federal programs, local programs, or private donors, are used to support those services.

Moreover, to continue to encourage services and supports for human trafficking victims, FVPSA funding opportunity announcements include human trafficking victims who are also victims of co-occurring domestic or dating violence as examples of underserved populations and human trafficking has been and will continue to be an Administration priority that is addressed at FVPSA grantee meetings and by FVPSA-funded technical assistance providers. However, given the numerous challenges identified by commenters about serving human trafficking victims, including the lack of resources, the inability to serve current domestic violence victims who are not human trafficking victims and the potential for confusing programs about FVPSA priorities, ACF has removed the rule text addressing human trafficking from the final rule at § 1370.5(d).

Comment: Two commenters requested that ACF reference the non-discrimination enforcement provisions at section 1557 of the Patient Protection and Affordable Care Act in addition to the enforcement provisions of the Civil Rights Act referenced in the NPRM.

Response: ACF agrees that section 1557's prohibition on discrimination in health programs or activities may in some cases apply to FVPSA-funded programs. Accordingly, ACF has added a reference to 45 CFR part 92 to section 1370.3 of this rule.

Comment: A number of commenters expressed concern regarding the requirement that no conditions can be imposed on the receipt of emergency shelter and the requirement that all supportive services shall be voluntary. Three commenters suggested that this section's placement in the anti-discrimination provisions is confusing and asked that the requirements be moved either to the section for State and Tribal applications or to § 1370.4 including a new title change suggestion for that section. Another commenter suggested that the section's current language prevents *shelter* operators from complying with the requirements in the Drug-free Workplace Act, to allow them discretion not to serve persons currently using illegal drugs, and to adopt reasonable policies or procedures to ensure that a person is not using illegal drugs. Three commenters also expressed concern that this section conflates the separate concepts of voluntary services and no conditions for the receipt of emergency shelter. They suggested that current rule text indicates that no condition whatsoever can be placed on individuals and families in shelter unless a State imposes a legal requirement to protect the safety and welfare of all shelter residents. Two commenters were uncomfortable with the NPRM language and noted apparent conflicts of laws would be considered on a case-by-case basis. Finally, one other commenter suggested that examples used in the NPRM preamble also be used in the rule text.

Response: We partially agree. While the requirements for no conditions on the receipt of emergency shelter and that supportive services shall be voluntary are to some extent considered accessibility challenges, or continued accessibility challenges once in shelter, we agree that including these requirements in the anti-discrimination section (which is also to a great extent about programmatic accessibility) is confusing and that the specific explanation of terms in the section could be clearer. Regarding the comment that terms are conflated to mean that only States may impose conditions based upon legal requirements to protect the safety and welfare of all shelter residents, we disagree. The rule text says that these provisions are not intended to preempt State law, in any case where a State may impose some legal requirement to protect the safety and welfare of all shelter residents; the intended rule text was meant to ensure that States may impose requirements to protect the safety and welfare of *shelter residents* (emphasis added), which does not conflict with the provision that no requirement may be imposed to receive shelter or that supportive services shall be voluntary.

Regarding the comment about complying with the Drug-free Workplace Act requirements, we disagree. The Drug-free Workplace Act targets the drug use activities of employees and not individuals receiving services (see 41 U.S.C. 8103). The commenter's concerns are therefore unwarranted.

The comments that identified concerns about the handling of conflicts of laws are addressed in the following rule text revision. To address concerns raised by all comments, § 1370.5(g) is re-designated § 1370.10(b)(10) and will read as follows: (10) Such additional agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe. Moreover, additional agreements, assurances, and information required by the Funding Opportunity Announcement and other program guidance will include that no requirement for participating in supportive services offered by FVPSA-funded programs may be imposed by grantees or subgrantees for the receipt of emergency shelter and receipt of all supportive services shall be voluntary. Similarly, the receipt of shelter cannot be conditioned on participation in other services, such as, but not limited to counseling, parenting classes, mental health or substance use disorders treatment, pursuit of specific legal remedies, or life skill classes. Additionally, programs cannot impose conditions for admission to shelter by applying inappropriate screening mechanisms, such as criminal background checks, sobriety requirements, requirements to obtain specific legal remedies, or mental health or substance use screenings. An individual's or family's stay in shelter cannot be conditioned upon accepting or participating in services. Based upon the capacity of a FVPSA-funded service provider, victims and their dependents do not need to reside in shelter to receive supportive services. Nothing is these requirements prohibits a shelter operator from adopting reasonable policies and procedures reflecting field-based best practices, to ensure that persons receiving services are not currently engaging in illegal drug use, if

that drug use presents a danger to the safety of others, creates an undue hardship for the shelter operator, or results in unsafe behavior. In the case of an apparent conflict with State, Federal, or Tribal laws, case-by-case determinations will be made by ACF if they are not resolved at the State or Tribal level. In general, when two or more laws apply, a grantee/subgrantee must meet the highest standard for providing programmatic accessibility to victims and their dependents. These provisions are not intended to deny a shelter the ability to manage its services and secure the safety of all shelter residents should, for example, a client become violent or abusive to other clients.

Comment: Two commenters suggested the regulation should provide guidance on sex-segregated education programs, secondary prevention programming, and inclusion of content relevant to LGBTQ populations.

Response: ACF has determined that while the commenter raises legitimate issues about other services for LGBTQ populations, these concerns are better left to technical assistance providers who are experts in providing domestic violence services to these populations.

Section 1370.6 What requirements for reports and evaluations apply to these programs?

Comment: Two commenters suggested that rule text regarding performance reports' submissions at such time as required by the Secretary be amended to include, ''although no more often than annually.''

Response: The statute and the proposed rule are clear that the Secretary may require performance reports at such time as required. ACF declines to limit the Secretary's discretion in this regard to ensure that necessary grantee and subgrantee performance information, including corrective action performance, are available upon request and in accordance with the requirements of the Paperwork Reduction Act.

Comment: One commenter pointed out that pursuant to 48 U.S.C. 1469a and 45 CFR 97.10 and 97.16, Territories that opt to consolidate their FVPSA funds with other HHS funds in a Consolidated Block Grant, are not required to submit a separate performance progress report to ACF. The commenter also identified that if they choose not to consolidate that they must provide an annual performance progress report to ACF, just as State and Tribal formula grantees are required to do.

Response: We agree. Therefore, the rule text at § 1370.6 is revised to read: Each entity receiving a grant or contract under these programs shall submit a performance report to the Secretary at such time as required by the Secretary. Such performance report shall describe the activities that have been carried out, contain an evaluation of the effectiveness of such activities, and provide such additional information as the Secretary may require. Territorial governments which consolidate FVPSA funds with other HHS funds in a Consolidated Block Grant pursuant to 45 CFR 97 are not required to submit annual FVPSA performance progress reports if FVPSA funds are not designated in the consolidation application for FVPSA purposes. If a territorial government either does not consolidate FVPSA funds with other HHS funds or does consolidate but indicates that FVPSA funds will be used for FVPSA purposes, the territorial government must submit an annual FVPSA performance progress report to FYSB.

Subpart B—State and Indian Tribal Grants

Section 1370.10 What additional requirements apply to State and Indian Tribal grants?

Comment: One commenter asked that the rule text in § 1370.10(a) be modified. They noted that each time examples are given for underserved or racial and ethnic populations, that other eligible communities be included. For example, the commenter noted that if older individuals or people with disabilities are included that all eligible groups and communities be listed (*i.e.* Tribes, racial and ethnic communities, survivors impacted by sexual orientation or gender identity, immigration status, etc.). This commenter applied the request not only to how States and Tribes include such communities and populations in their funding but to include the expertise of people from historically marginalized communities in State planning. Additionally, the commenter identified that the word ''Tribes'' be removed from § 1370.10(a) in the third sentence because Indian Tribes include populations that are themselves underserved and lack many of the basic services assumed for other communities in the United States.

Response: We respectfully disagree in part. In this and other rule sections similar comments were received. To clarify and provide consistency throughout this rule, we will use underserved populations and culturally- and linguistically-specific populations rather than inconsistently identifying different communities in different sections of the rule, unless specifically required by statutory language. ''Tribes'', in deference to Tribal sovereignty, is removed from the sentence as suggested by the commenter. Therefore, § 1370.10(a) is revised to include the following sentence: States must involve community-based organizations that primarily serve underserved populations, including culturally- and linguistically-specific populations, to determine how such populations can assist the States in serving the unmet needs of the underserved populations.

Comment: A commenter suggested that involving the State Domestic Violence Coalitions in State-planning, and having States consult with them on statewide needs, is a conflict because many States also fund the Coalitions. This funding relationship, and the fact that Coalition membership includes FVPSA-funded programs, would create possible conflicts of interest if Coalitions were to participate in specific award decisions and program monitoring. The commenter said that State's purchasing rules would preclude Coalitions in monitoring and in any award-related decisions. The commenters indicated that § 1370.10(a) is overreaching and needs to be amended to allow States more autonomy by deleting the reference, and multiple additional references throughout the document, to award making and monitoring.

Response: We respectfully disagree but we have revised the regulatory text to ensure clarity. Section 1370.10(a), while identifying that State Domestic Violence Coalitions must be involved in the planning and monitoring of the distribution of grants to eligible entities and the administration of grant programs and projects (per FVPSA requirements at 42 U.S.C. 10407(a)(2)(D)), does not create potential conflicts of interest. The language cited by the commenter is found in the NPRM preamble and is not reflected in the rule text. However, the NPRM preamble also provides examples of what is meant by the proposed language. It states that ''at a minimum to further FVPSA requirements, we expect that States and Coalitions will work together to determine grant priorities based upon jointly identified needs; to identify strategies to address needs; to define mutual expectations regarding programmatic performance and monitoring; and to implement an annual collaboration plan that incorporates concrete steps for accomplishing these tasks. All of these requirements are either found in the Funding Opportunity Announcements

dating back to FVPSA reauthorization in 2010 or have been discussed in grantee meetings and other informal communications via FYSB listservs.'' As such, no conflict is potentially set up by these minimum requirements unless States' conflate the requirements to mean that Coalitions, who compete for State funding, must be involved in making actual award decisions. There is nothing in this rule that suggests this. As a result of this comment, § 1370.10(a) is revised to include the following sentence: At a minimum to further FVPSA requirements, we expect that States and State Domestic Violence Coalitions will work together to determine grant priorities based upon jointly identified needs; to identify strategies to address needs; to define mutual expectations regarding programmatic performance and monitoring; and to implement an annual collaboration plan that incorporates concrete steps for accomplishing these tasks. If States also fund State Domestic Violence Coalitions to provide training, technical assistance, or other programming, nothing in this rule is intended to conflict with State contracting requirements regarding conflicts of interest but rather that this rule's requirements should be interpreted to complement States' contracting and procurement laws and regulations.

Comment: A commenter suggested that examples of successful collaborations and partnerships between States, Coalitions, and Tribes be included in this rule section and that the rule promote examples of how States are meeting application requirements related to these issues.

Response: We respectfully disagree. These topics are more suited for grantee meetings and technical assistance which may also be provided by FVPSA-funded Coalitions and Resource Centers working with States in this regard. Additionally, ACF may issue policy guidance with examples in order to highlight best practices related to successful collaborations.

Comment: A commenter suggested that rule text § 1370.10(b) is an unfunded mandate to fund new programs.

Response: We respectfully disagree. There are no requirements in this section that require funding new programs. The rule text requires at § 1370.10(b)(2)(iii) that the States provide in their applications ''A description of the specific services to be provided or enhanced, such as new shelters or services, improved access to shelters or services, or new services for underserved populations such as victims from communities of color, immigrant victims, victims with disabilities, or older individuals.'' This language does not require newly funded programs, but rather requires examples by using ''such as'' language to identify potential new shelters or enhanced services. If there are no new or enhanced services to describe then a State's application should say so.

Comment: One commenter suggested that the States be required to describe how they will ensure that at least 10% of the State FVPSA funds are distributed to culturally-specific organizations whose primary-purpose is serving racial and ethnic populations. They suggest this would mirror provisions in VAWA and bring FVPSA and VAWA provisions in line with each other to ensure greater coordination and more equitable distribution of grant funding across these two critical programs.

Response: The requirements for FVPSA Formula Grants to States are very clear and they do not include a State set-aside of 10% for culturally-specific organizations. Therefore ACF cannot change the formula even if other Federal statutes, namely VAWA, have different formulas.

Comment: One commenter had several recommendations for revising § 1370.10(b)(2) to add new requirements addressing: (1) States' (and Tribes) requirements to involve community-based organizations serving culturally-specific, underserved communities and determine how such organizations can assist States and Tribes in serving the unmet needs of the underserved community; (2) that States should include information on the existence and availability of services, whether or not FVPSA-funded; and (3) that States' outreach plans include the process for obtaining and integrating input from the community.

Response: We respectfully disagree. The State's application at § 1370.10(b)(2) reflects statutory language and already adds guidance to support services for underserved populations and culturally- and linguistically-specific populations. While the commenter's ideas are good, they do not significantly enhance or help to further explain current statutory or proposed rule text requirements.

Comment: One commenter suggested that LGBTQ communities be added as underserved populations for purposes of the State application requirements found in rule text § 1370.10(b)(2).

Response: LGBTQ communities are included in underserved populations for the purposes of State application requirements; section 1370.2 defines underserved populations to include actual or perceived sexual orientation and gender identity. As mentioned in previous responses to similar comments in other sections asking that all eligible organizations representing multiple potential communities be added to clarify underserved populations, it is the intent of this rule to, for consistency, use the term underserved populations which includes actual or perceived sexual orientation and gender identity, unless otherwise required by FVPSA.

Comment: Three commenters suggested that it would be useful for this rule and FVPSA funding procedures to clarify that while Census Bureau data may be important in helping a program to establish its relevance to the population in its service area, Census data also has significant limits. The commenters suggested amending § 1370.10(b)(2)(i) to include that other demographic information may be used to identify needs. In particular, the commenters identified that Census Bureau data undercounts LGBTQ individuals and immigrants and refugees. The commenters identified that while victims from racial and ethnic populations may appear to be overrepresented in services as compared to the Census Bureau population data, other relevant data may provide critical information about the vital need for culturally relevant and linguistically appropriate programming to those communities.

Response: We agree that there may be other sources of relevant data to consult for developing service and programming plans, therefore rule text at § 1370.10(b)(2)(i) is revised to read: Identification of which populations in the State are underserved, a description of those that are being targeted for outreach and services, and a brief explanation of why those populations were selected to receive outreach and services, including how often the State revisits the identification and selection of the populations to be served with FVPSA funding. States must review their State demographics and other relevant metrics at least every three years or explain why this process in unnecessary.

Comment: A commenter stated that § 1370.10(b)(2)(ii) requires that States use new State dollars to provide training to FVPSA-funded grantees. The commenter indicated: (1) The paragraph is unclear whether the State is expected to provide training and technical assistance to new culturally specific organizations or to existing mainstream organizations; and (2) the paragraph is overreaching in the expectation that States will be able to provide new training and technical assistance

without any new dollars added to the State award. Additionally, the commenter said that due to the potential for conflicts of interest, it is not feasible to include representatives of service providers for underserved populations in a leadership role in many aspects of FVPSA-funding including award making and monitoring. The commenter suggested that this section should be amended to permit, but not require, training and technical assistance, and to clarify that representatives from underserved populations be consulted in FVPSA planning.

Response: We respectfully disagree. Section 1370.10(b)(2)(ii) does not require States to involve representatives from underserved populations in award-making decisions. It is reasonable to expect that States will provide training and technical assistance to those reached by States' outreach plans (which is the subject of paragraph (2)) and there is nothing in this section that requires States to use new or additional funding to meet requirements. Since the section specifically addresses underserved populations, who should receive technical assistance pursuant to the requirement is already identified.

Comment: A commenter acknowledged the rule's intent for Tribes to participate meaningfully in State planning processes and needs assessments, while simultaneously not imposing additional burdensome requirements on Tribes or infringing on Tribal sovereignty. The commenter suggested that by adding additional language in § 1370.10(b)(3) to include Tribal Coalitions, ACF's intent will be more fully realized.

Response: We agree. Therefore § 1370.10(b)(3) is revised to read: A description of the process and procedures used to involve the State Domestic Violence Coalition and Tribal Coalition where one exists, knowledgeable individuals, and interested organizations, including those serving or representing underserved populations in the State planning process.

Comment: The commenter above suggested for the same reasons that § 1370.10(b)(4) be amended to include Tribal Coalitions.

Response: We agree. Therefore, § 1370.10(b)(4) is revised to read: Documentation of planning, consultation with, and participation of the State Domestic Violence Coalition and Tribal Coalition where one exists, in the administration and distribution of FVPSA programs, projects, and grant funds awarded to the State.

Comment: A commenter suggested revising § 1370.10(b)(4) to track the statute specifically and that (b)(4) be stricken and revised for this purpose.

Response: The regulations are intended to provide clarity on statutory and programmatic requirements. We believe § (b)(4) and (b)(10) provide the guidance needed to meet statutory guidelines. Therefore, we did not change the rule in response to this comment.

Comment: A commenter urged ACF to delete the language in § 1370.10(b)(4) and replace with ''the State's overall FVPSA Plan'' based on the potential for conflicts of interest described in previous comments regarding the State requirement to involve the Coalition in the planning and monitoring of the distribution of grant funds, etc.

Response: The current rule text closely tracks specific statutory language because we believe the statute provides the necessary clarity. Therefore, we respectfully decline to adopt the suggested revision.

Comment: One commenter suggested that § 1370.10(b)(5) align specifically with statutory language.

Response: The regulations are intended to provide clarity on statutory and programmatic requirements. We believe the current rule text at § 1370.10(b)(5) provides the guidance needed to meet statutory guidelines. We did not make any changes to the rule.

Comment: A commenter suggested that § 1370.10(b)(5) be amended to expand the number of populations to be addressed in States' planning on how funding processes and allocations will address the needs of various populations. Another commenter stated that the definitions for urban and rural based on the U.S. census may conflict with a State's definition as specified in State regulations. The commenter suggested that the State should be able to use its own definition.

Response: We respectfully disagree in part. While adding populations to those identified in the rule text may seem more inclusive, given previous comments and our responses, we have determined that using the term underserved populations as defined by, but not limited to, multiple populations (see § 1370.2) serves the commenter's purpose. Using terminology that is redundant only adds to interpretive confusion and inconsistency throughout the rule. Additionally, by using the terms underserved populations and culturally- and linguistically-specific populations unless otherwise required by FVPSA, help to provide clarity and consistency throughout the rule.

We agree with the comments concerning allowing States to use their own definition of urban and rural. In revised § 1370.10(b)(5), we allow states to use their own definition unless the definition does not achieve the equitable distribution of funds within the State and between urban and rural areas. Section 1370.10(b)(5) is revised to read: A description of the procedures used to assure an equitable distribution of grants and grant funds within the State and between urban and rural areas. States may use one of the Census definitions of rural or non-metro areas or another State-determined definition. A State-determined definition must be supported by data and be available for public input prior to its adoption. The State must show that the definition selected achieves an equitable distribution of funds within the State and between urban and rural areas. The plan should describe how funding processes and allocations will address the needs of underserved populations as defined in § 1370.2, including Tribal populations, with an emphasis on funding organizations that can meet unique needs including culturally- and linguistically-specific populations. Other Federal, State, local, and private funds may be considered in determining compliance.

Comment: A commenter suggested § 1370.10(b)(6) be amended to comport with the clarified and more flexible definition of shelter.

Response: We agree with the commenter and have revised the rule. We have also made edits to § 1370.10(b)(6) to remove ''and culturally specific communities.'' Therefore, § 1370.10(b)(6) is revised to read: A description of: (1) How the State plans to use the grant funds including a State plan developed in consultation with State and Tribal Domestic Violence Coalitions and representatives of underserved populations; (2) the target populations; (3) the number of shelters and programs providing shelter to be funded; (4) the number of non-residential programs to be funded; the services the State will provide; and (5) the expected results from the use of the grant funds. To fulfill these requirements, it is critically important that States work with State Domestic Violence Coalitions and Tribes to solicit their feedback on program effectiveness which may include recommendations such as establishing program standards and participating in program monitoring.

Comment: Two commenters suggested that the language in §§ 1370.10(b)(7) and (c)(5) be changed to track the statute specifically; they believed the language confuses statutory requirements and may impose legal impediments not intended by the statute.

Response: After careful consideration, we agree the language should be revised to reflect the statutory provision. It was not ACF's intent to change statutory requirements or to potentially complicate matters which may impose undue burdens on victims or conflict with States' eviction laws. Therefore, § 1370.10(b)(7) is revised to read: An assurance that the State has a law or procedure to bar an abuser from a shared household or a household of the abused person, which may include eviction laws or procedures, where appropriate. Section 1370.10(c)(7) is revised to read: An assurance that the Indian Tribe has a law or procedure to bar an abuser from a shared household or a household of the abused person, which may include eviction laws or procedures, where appropriate.

Comment: A commenter suggested that § 1370.10(b)(8) be amended to more clearly track statutory language to ensure that States give special funding-emphasis to community-based projects of demonstrated effectiveness carried out by primary-purpose projects.

Response: We agree. Therefore, § 1370.10(b)(8) is revised to add the following sentence: In the distribution of funds, States will give special emphasis to the support of community-based projects of demonstrated effectiveness that are carried out by primary-purpose projects.

Comment: One commenter noted that the FVPSA requirement at 42 U.S.C. 10409(a) for Federal consultation with Tribal governments in the planning of grants for Indian Tribes is not referenced in this rule. The commenter indicated that this consultation, which should take place annually, would greatly strengthen development and provision of domestic violence shelter and supportive services for American Indian and Alaska Native Tribes.

Response: ACF is committed to ensuring that FYSB/FVPSA staff representatives participate meaningfully in ACF consultations.

Comment: One commenter, while acknowledging that ACF has been cautious to avoid overly burdensome requirements on Tribes identifies that § 1370.10(c)(1) requires for consortia applicants that ''a representative from each Tribe sign the application'' as well as submit Tribal resolutions supporting or approving a consortia. The commenter notes that if Tribal resolutions are the vehicles to support applications it is in fact duplicative of requiring Tribal resolutions themselves. The commenter suggested that signed resolutions from each Tribe applying as part of a consortium should suffice as documentation.

Response: We respectfully believe that specific and current information with respect to the roles, responsibilities, and specific commitments of consortia members is necessary for the effective administration of the grant program and requires documentation separate from that indicating approval for application submittal. As such, ACF revised the regulatory text in response to this comment to more clearly describe the purposes of the documentation requirements. Section 1370.10(c) is revised to read: An application from a Tribe or Tribal Organization must include documentation demonstrating that the governing body of the organization on whose behalf the applications is submitted approves the application's submission to ACF for the current FVPSA grant period. Each application must contain the following information or documentation: (1) Written Tribal resolutions, meeting minutes from the governing body, and/or letters from the authorizing official reflecting approval of the application's submittal, depending on what is appropriate for the applicant's governance structure. Such documentation must reflect the applicant's authority to submit the application on behalf of members of the Tribes and administer programs and activities pursuant to FVPSA; (2) The resolution or equivalent documentation must specify the name(s) of the Tribe(s) on whose behalf the application is submitted and the service area for the intended grant services; (3) Applications from consortia must provide letters of commitment, memoranda of understanding, or their equivalent identifying the primary applicant that is responsible for administering the grant, documenting commitments made by partnering eligible applicants, and describing their roles and responsibilities as partners in the consortia or collaboration. The remaining rule text in this section is renumbered to comport with the revisions above.

Subpart C—State Domestic Violence Coalition Grants

§ 1370.20 What additional requirements apply to State Domestic Violence Coalitions?

Comment: Two commenters referencing § 1370.20(a) suggested revising the language because urging States, localities, cities, and the private sector to become involved in State and local planning towards an integrated service delivery approach misinterprets the role of various stakeholders. The commenters suggested that striking ''become involved'' and insert ''improve responses to. . .'' would more accurately reflect the roles of stakeholders.

Response: We agree that the commenters' suggested language provides clarity. Therefore § 1370.20(a) is revised as follows: State Domestic Violence Coalitions reflect a Federal commitment to reducing domestic violence; to urge States, localities, cities, and the private sector to improve the responses to and the prevention of domestic violence and encourage stakeholders and service providers to plan toward an integrated service delivery approach that meets the needs of all victims, including those in underserved populations; to provide for technical assistance and training relating to domestic violence programs; and to increase public awareness about and prevention of domestic violence and increase the quality and availability of shelter and supportive services for victims of domestic violence and their dependents.

Comment: One commenter suggested that LGBTQ communities be named as an underserved population in the planning identified in § 1370.20(a).

Response: For the reasons previously identified in responses to other comments we will not revise the rule. Underserved populations and culturally- and linguistically-specific populations are terms used throughout the rule for consistency and to avoid confusion, except where required by statute. In the definitions section of the rule, the term underserved populations includes actual or perceived sexual orientation and gender identity.

Comment: One commenter, referencing § 1370.20(b)(2), strongly objected to the non-statutory language ''though not exclusively composed of'' and strongly urged that the rule strike this language. The commenter also said that the proposed language could be read as a mandate not contemplated in the statute or the NPRM preamble which states, ''that Boards of Directors composed of member representatives and community members are highly encouraged.'' Another commenter suggested that this section be revised to read, ''As authorized by applicable law and regulations, contains such agreements, assurances, and information, in such forms, and submitted in such matter as the Funding Opportunity Announcement and related program guidance prescribe.''

Response: We disagree in part. The second half of the commenter's proposed language is already included in § 1370.20(c)(2) for application

submissions. As such, their request to include it in the eligibility/designation purpose of the rule is not relevant to that section. Regarding the first commenter's concern, we agree and § 1370.20(b)(2) is revised to read: The Board membership of the Coalition must be representative of such programs, and may include representatives of communities in which the services are being provided in the State.

Comment: One commenter suggested that § 1370.20(b)(3) be revised to remove unnecessary detail, specifically that Coalitions as independent, autonomous nonprofit organizations, need to be financially sustained by their boards of directors and their membership bodies.

Response: We respectfully disagree. Our experience through conducting site visits and monitoring of grantees has revealed that coalition members often do not acknowledge or understand that coalitions as independent non-profit organizations need to financially sustain the organizations independent of the work they do to financially sustain member programs. Therefore, the rule language is unchanged.

Comment: Three commenters identified that § 1370.20(b)(4) does not fully or accurately reflect the full statutory purposes of Coalitions. They recommended that the rule explicitly follow the statute and clarify that there are additional Coalition purposes named in the statute.

Response: We agree the statutory language would be helpful in this section. As such § 1370.20(b)(4) is revised to read: The purpose of a State Domestic Violence Coalition is to provide education, support, and technical assistance to such service providers to enable the providers to establish and maintain shelter and supportive services for victims of domestic violence and their dependents; and to serve as an information clearinghouse, primary point of contact, and resource center on domestic violence for the State; and support the development of polices, protocols, and procedures to enhance domestic violence intervention and prevention in the State.

Comment: Two commenter's suggested that the language in § 1370.20(c)(1) is too specific, beyond the reach of the statute, and misaligned with coalitions' work. They stated that the rule should not include additional required abilities or capacities not directly tied to the statute and that additional mandates not be imposed without changes to the law. The commenters strongly recommended that the rule strike the following language in § 1370.20(c)(1): ''Demonstrated ability or capacity may include but is not limited to: identifying successful efforts that support child welfare agencies' identification and support of victims during intake processes; creation of membership standards that enhance victim safety and fully require training and technical assistance for compliance with Federal housing, disability, and sex discrimination laws and regulations; and, training judicial personnel on trauma-informed courtroom practice.'' The commenters also suggested that the requirement in the last sentence of § 1370.20(c)(1) be changed from ''must also have documented experience in'' to ''should reflect the subject areas and activities described in:''

Response: We disagree in part. The requirements in the last sentence of § 1370.20(c)(1) are statutory in that Coalitions must/shall have documented experience in the statutory areas identified in that section, therefore, there is no discretion to change the requirements to ''*should* (emphasis added) reflect the subject areas. . .''. Otherwise, we agree that the language should more closely track the statute to avoid confusion. The language in § 1370.20(c)(1) is revised to read: Includes a complete description of the applicant's plan for the operation of a State Domestic Violence Coalition, including documentation that the Coalition's work will demonstrate the capacity to support state-wide efforts to improve system responses to domestic and dating violence as outlined in (iii) through (viii) below. Coalitions must also have documented experience in administering Federal grants to conduct the activities of a Coalition or a documented history of active participation in . . .

Comment: In reference to § 1370.20(c)(1)(iii), one commenter suggested each time examples are offered for underserved and/or racial and ethnic populations that if one example is given, that all eligible communities be listed in the section.

Response: As identified in previous responses to comments, providing examples throughout the rule of different populations promotes inconsistency and confusion. Therefore, for the purposes of identifying such communities, the terms underserved populations and culturally- and linguistically-specific populations are used throughout the rule unless otherwise statutorily required. As such, § 1370.20(c)(1)(iii) is revised to read: Working in collaboration with service providers and community-based organizations to address the needs of family violence, domestic violence, and dating violence victims, and their dependents, who are members of underserved populations and culturally- and linguistically-specific populations.

Comment: Two commenters asked that § 1370.20(c)(1)(iv) be amended to add the phrase ''to support'' and it be placed in between the terms ''mental health'' and ''the development'' as well as include the statutory phrases of ''social welfare and businesses.''

Response: We respectfully disagree because the rule text tracks statutory language and the proposed changes do not provide additional clarity to improve a reader's understanding of the statutory language.

Comment: One commenter asked that § 1370.20(c)(1)(vi) be changed while acknowledging that it tracks the statute. The commenter specifically recommended a clarification that the referenced child abuse is present as a co-occurrence with the domestic, dating or family violence by inserting ''and there is a co-occurrence of child abuse'' and striking ''and child abuse is present.'' Additionally, the commenter recommended striking ''family law'' and ''criminal court judges'' and only refer to ''judges,'' so as to not limit the types of judges with whom the Coalitions may work.

Response: We respectfully disagree because, as the commenter notes, the language tracks the statute. To change the language would specifically change the statute rather than help clarify it. Additionally, the statutory language does not limit the types of judges with whom the Coalitions may work; it only provides examples of the kinds of judges envisioned by the statute.

Comment: Two commenters identified that § 1370.20(c)(1)(vii) is not required by statute and that if the section is meant to be allowable rather than mandatory that it be amended to say so.

Response: We agree. Since current sub-section (vii) is not mandated when the rest of § 1370.20(c)(1) is mandated, the entire section is revised to re-designate current subsection (ix) as (viii); current subsection (viii) will be re-designated as (vii) and the current subsection (vii) will be removed.

Comment: A commenter suggested § 1370.20(e) be revised to include that HHS should work in close consultation with a nationwide organization of Coalitions that has a demonstrated history of providing technical assistance to Coalitions. They also requested that language be added that a Coalition should have the reach throughout the State that reflects its depth and breadth of connections.

Response: We respectfully disagree. HHS will determine the technical

resources it needs, if any, to determine the designation or re-designation of a Coalition because Federal staff are experts in the field with the relationships needed to make such determinations. Additionally, the statute and this rule require that Coalitions be statewide entities so the commenter's requested language change is not necessary. A technical correction is made to rule text at § 1370.20(d) to correct the FVPSA citation that originally referenced section 311(e) to 42 U.S.C. 10411(e). Technical corrections are also made to the regulatory text at § 1370.20(e) to: (1) Replace ''primary-purpose domestic violence programs'' with ''primary-purpose domestic violence service provider'' to avoid confusion previously identified about Coalition membership requirements and (2) remove the term ''racial and ethnic populations'' because the term is already included in the underserved populations' definition.

Comment: A commenter suggested, in reference to § 1370.20(f) (regarding situations where an HHS-designated Coalition financially or otherwise dissolves), that HHS work in close consultation with a national organization of Coalitions to designate a new coalition. The commenter also recommended the HHS consider limiting the stakeholders to the identified service providers and referencing statutory criteria without further explication. The commenter encouraged that the rule include reference to coalitions that are newly formed or merged.

Response: We respectfully disagree in part. The designation of a new Coalition is within the exclusive discretion of HHS which will determine the technical resources it needs, if any, to determine the designation or re-designation of a Coalition. In response to the commenter's suggestion that HHS' designation or re-designation of Coalition limit the inclusion of stakeholders, HHS reserves the right to include all appropriate stakeholders as it determines appropriate. As to the commenter's last suggestion, we agree. Therefore, § 1370.20(f) is revised to read: Regarding FVPSA funding, in cases where a Coalition financially or otherwise dissolves, is newly formed, or merges with another entity, the designation of a new Coalition is within the exclusive discretion of HHS. HHS will seek individual feedback from domestic violence service providers, community stakeholders, State leaders, and representatives of underserved and culturally- and linguistically-specific populations to identify an existing organization that can serve as the Coalition or to develop a new organization. The new Coalition must reapply for designation and funding following steps determined by the Secretary. HHS will determine whether the applicant fits the statutory criteria, with particular attention paid to the applicant's documented history of effective work, support of primary-purpose domestic violence service providers and programs that serve underserved populations and culturally- and linguistically-specific populations, coordination and collaboration with the State government, and capacity to accomplish the FVPSA mandated role of a Coalition.

Subpart D—Discretionary Grants and Contracts

Section 1370.30 What national resource center and training and technical assistance grant programs are available and what additional requirements apply?

Comment: One commenter suggested that § 1370.30(a)(1)(i) be removed because it adds requirements related to programs and research for older individuals and those with disabilities which were not contemplated by Congress in FVPSA.

Response: We agree because underserved populations and culturally- and linguistically-specific populations will be used rather than identifying a list of other populations inconsistently, specifically older individuals and those with disabilities in this particular instance, Therefore, older individuals and those with disabilities are removed from the rule text because they are included in the underserved populations and culturally- and linguistically-specific populations definitions. As a result, § 1370.30(a)(1)(i) is revised to read, (i) offer a comprehensive array of technical assistance and training resources to Federal, State, and local governmental agencies, domestic violence service providers, community-based organizations, and other professionals and interested parties, related to domestic violence service programs and research, including programs and research related to victims and their children who are exposed to domestic violence.

Comment: One commenter suggested that § 1370.30(a)(5)(iv), which they acknowledge reflects specific statutory language, is not FVPSA's intent. The specific language they object to is: ''Additionally, eligible entities shall offer training and technical assistance and capacity-building resources in States where the population of Indians (including Alaska Natives) and Native Hawaiians exceeds 2.5 percent of the total population of the State.'' The commenter indicated that technical assistance and capacity building is particularly needed in Alaska, where 40% of the nation's Tribes are located and where the incidence of *domestic violence* is morally unconscionable. They also noted that the original 10% formula of total FVPSA appropriations for Tribes was established in the 1980's which did not account for Alaska's 229 Tribal governments whose Federal recognition was not clarified by the Department of the Interior until January, 1993. The commenter stated that they believe the intent of the State-based Tribal resource centers is to provide focused and targeted technical assistance and capacity-building to the State in which they are located; requiring them to also serve additional States would impose significant capacity and resource challenges.

Response: ACF acknowledges the high rates of domestic violence impacting Tribal nations throughout the United States. However, FVPSA is very clear that eligible entities shall provide training and technical assistance and capacity-building resources in States where the populations of Indians exceeds 2.5%. Additionally, FVPSA was reauthorized by Congress in 2010 where presumably Alaska's 229 Federally-recognized Tribal nations were taken into account when the statute was drafted. As a result, ACF cannot agree that FVPSA is limited to eligible entities (which must be located in States where the population exceeds 10% of the State) which only focus on the State in which they are located. To provide clarity, ACF moved the requirement that state resource centers offer technical assistance and training resources in States in which the population of Indians (including Alaska Natives) or Native Hawaiians exceeds 2.5 percent of the total population of the State to § 1370.30(a)(5)(i). Section 1370.30(a)(5)(iv) is amended to reference the FVPSA statute at 42 U.S.C. 10410(c)(4).

Comment: One commenter suggested § 1370.30(c)(1) and (2) (addressing the requirements in the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, including language addressing access for the Limited English Proficient (LEP) using interpretation and translation services and access for individuals with communication-related disabilities) be included in a section that applies to a larger number of grantees beyond technical assistance providers and resource centers (this request and

response is cross-referenced in § 1370.5(e)).

Response: We agree. The language in rule text §§ 1370.30(c)(1) and (2) has been moved to § 1370.5(d) so that it applies to all FVPSA-funded services.

Section 1370.31 What additional requirements apply to grants for specialized services for abused parents and their children?

Comment: A commenter suggested that a fourth section be added to rule text § 1370.31(b)(1) that addresses preventing professionals working with children and families from inappropriately punishing non-abusive parents for, among other things, cohabiting with an abusive parent.

Response: We agree because it has been reported throughout the field that the non-abusing parent is often penalized for continuing contact or having a relationship with a domestic violence perpetrator even if the non-abusive parent determines that the best way to keep children safe is to continue contact in some form with an abusive partner until the abuser is held accountable or demonstrates changed behavior that will keep the family safe. Therefore, § 1370.31(b)(1) is revised to add a subsection (iv) to read: How, in the case of victims who choose to or by virtue of their circumstances must remain in contact with an abusive partner/parent, the entity will: Consider the victim's decision-making for keeping children safe within the continuum of domestic violence (see the definition of domestic violence in the regulatory text at § 1370.2 which describes the potential range of behaviors constituting domestic violence); not place burdens or demands on the non-abusive parent that the parent cannot comply with due to the coercive control of the offender; and take precautions to avoid actions that discourage victims from help-seeking, such as making unnecessary referrals to child protective services when survivors go to community-based organizations for assistance in safety planning to protect children.

Comment: One commenter suggested language changes to § 1370.31(b)(1)(i) to strengthen confidentiality requirements for these grants.

Response: We agree. Therefore the rule text at § 1370.31(b)(1)(i) is revised specifically in response to the commenter's suggestion to read: how the entity will prioritize the safety of, and confidentiality of, information about victims of family violence, victims of domestic violence, and victims of dating violence and their children, and will comply with the confidentiality requirements of FVPSA at 42 U.S.C. 10406(c)(5) and this rule at § 1370.4.

Comment: One commenter suggested that § 1370.31(b)(2) be revised to allow for partnering organizations to provide the activities in this section and to add examples of other coordinating entities in addition to coordinating with the child welfare system.

Response: The proposed changes, which add language that is not in FVPSA, provide additional ways within the intent of the statutory framework to help address the needs of children exposed to domestic violence and foster strong, healthy relationships between children and their non-abusing parent. The commenter's proposed language reflects the realities of the multiple systems which support children and their non-abusing parent to promote healing and social and emotional well-being and the need to work within those systems to achieve comprehensive successes on behalf of families experiencing domestic violence. We agree with these suggested changes and therefore, § 1370.31(b)(2) is revised to read: Demonstrates that the applicant has the ability to effectively provide, or partner with an organization that provides, direct counseling, appropriate services, and advocacy on behalf of victims of family violence, domestic violence, or dating violence, and their children, including coordination with services provided by the child welfare system, schools, health care providers, home visitors, family court systems, and any other child or youth serving system.

Comment: One commenter suggested language changes to rule text § 1370.31(c)(1) through (3) because it does not mirror the discretionary uses of grant funds and mistakenly includes an application requirement. They also suggested re-designating the NPRM proposed rule text in § 1370.31(c)(4) as § 1370.31(b)(4) in the application section because the language is mistakenly placed in the discretionary uses section.

Response: We agree with the commenter's assessment of this section. Therefore § 1370.31(c)(1) through (3) is revised to read: (c) Eligible applicants may use funds under a grant pursuant to this section: (1) To provide early childhood development and mental health services; (2) To coordinate activities with and provide technical assistance to community-based organizations serving victims of family violence, domestic violence, or dating violence or children exposed to family violence, domestic violence, or dating violence; and (3) To provide additional services and referrals to services for children, including child care, transportation, educational support, respite care, supervised visitation, or other necessary services. Section 1370.31(c)(4) is re-designated as § 1370.31(b)(4).

Section 1370.32 What additional requirements apply to National Domestic Violence Hotline grants?

Comment: Two commenters suggested that language be added to § 1370.32(c)(1)(vi) to codify a requirement for a 24/7 operation of a hotline that is directly accessible to deaf and hard of hearing survivors of domestic violence, which will close the significant gap in access that currently exists, and provide the deaf and hard of hearing community with equal access to a valuable community resource.

Response: We agree that survivors of domestic violence who are deaf or hard of hearing should be able to receive hotline services 24/7 through methods that are accessible to them. FVPSA at 42 U.S.C. 10413(d)(2)(F) states that 'an eligible awardee for a national *domestic violence* hotline grant shall include a plan for facilitating access to the hotline by persons with hearing impairments'. As noted by the commenter, we have already included this language in our regulatory text. We interpret this to mean that the plan shall include methods for providing services for survivors who are deaf and hard of hearing on a 24/7 basis. Furthermore, as outlined in the comment and response below, we included video to the definition of ''telephone'' in order to increase access to the hotline for our survivors who are deaf or hard of hearing.

Comment: Two commenters suggested that ''video'' be added to the definition of telephone in § 1370.32(b), particularly as face to face communications can be very helpful for certain users, such as victims who are deaf or hard of hearing.

Response: We agree that ''video'' is another example of a method of communication that fits within the proposed definition of ''telephone''. The last part of the proposed definition which states ''. . . or other technological means which connects callers or users together'' specifically allows for any current or future devices and/or methods to be included. However, we have revised the language to include video as another example of a method of communication.

Comment: A commenter suggested that the grant eligibility requirements in § 1370.32(c)(iv) through (vi) be revised to include: The use of social media and other emerging technologies to publicize

the hotline; that the plan for providing service to Limited English Proficient callers include advocacy or supportive services in the native languages of Limited English Proficient individuals who contact the hotline; and that the plan for facilitating access to the hotline by persons with disabilities include other mechanisms, such as face to face video, where possible, for persons who are Deaf or hard of hearing.

Response: Section 1370.32(c)(1)(iv) through (vi) relates specifically to what must be included in an applicant's plan, and does not prescribe the methods that an applicant will use to conduct its plan. The merits of each application (plan) are evaluated based on many factors including statutory requirements and the extent to which the applicant proposes comprehensive service provision, especially to underserved populations. Additionally, in terms of social media, while we encourage creativity and use of new technology, we do not prescribe methods for an applicant as they conduct their plan. As such, we respectfully decline to include these additional requirements as this section closely tracks statutory requirements. However, we did include additional language in section 1370.32(c)(1) to clarify that the term ''service'' includes advocacy and supportive services.

Comment: A commenter suggested that the word ''teen'' be stricken from ''national teen dating violence hotline'' in § 1370.32(c)(1)(vii) because many of those who contact the National Domestic Violence Hotline's youth helpline, *Loveisrespect.org*, are not in fact teenagers; most range in age from 12–24 years old.

Response: While we recognize that many of those who contact the youth helpline may not in fact be teens, we respectfully disagree with the recommendation that ''teen'' be stricken in 1370.32(c)(1)(vii) because 42 U.S.C. 10413(e)(2)(F) specifically identifies ''a national teen dating violence hotline'' and the rule tracks the statutory language. Further, the statute states that the hotline ''shall provide assistance and referrals for youth victims of domestic violence and for victims of dating violence who are minors, which may be carried out through a national teen dating violence hotline.'' However, we would note that it does not state that a national teen dating violence hotline may not serve adults.

VIII. Impact Analysis

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, minimizes government imposed burden on the public. In keeping with the notion that government information is a valuable asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains no new information collection requirements. There is an existing requirement for grantees to provide performance progress reports under OMB Control Number 0970–0280. Grantees are also required to submit an application and annual financial status report. State domestic violence coalitions are also required to provide certain information to the public. These existing requirements are also approved under the OMB Control Number 0970–0280. Nothing in this rule requires changes in the current requirements, all of which have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act.

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant economic impact on a substantial number of small entities. We have not proposed any new requirements that would have such an effect. These standards would almost entirely conform to the existing statutory requirements and existing practices in the program. In particular, we have proposed imposing only a few new processes, procedural, or documentation requirements that are not encompassed within the existing rule, existing Funding Opportunity Announcements, or existing information collection requirements. None of these would impose consequential burdens on grantees. Accordingly, a Regulatory Flexibility Analysis is not required.

Regulatory Impact Analysis

Executive Order 12866 and 13563 require that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in these Executive Orders, including imposing the least burden on society, written in plain language and easy to understand, and seeking to improve the actual results of regulatory requirements. The Department has determined that this rule is consistent with these priorities and principles. The Executive Orders require a Regulatory Impact Analysis for proposed or final rules with an annual economic impact of $100 million or more. Nothing in this rule approaches effects of this magnitude. Nor does this rule meet any of the other criteria for significance under these Executive Orders. This rule has been reviewed by the Office of Management and Budget.

Congressional Review

This rule is not a major rule (economic effects of $100 million or more) as defined in the Congressional Review Act.

Federalism Review

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federalism implications. This rule will not have substantial direct impact on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with the Executive Order we have determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact Statement.

Family Impact Review

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any new or adverse impact on the autonomy or integrity of the family as an institution. Like the existing rule and existing program practices, it directly supports family well-being. Since we propose no changes that would affect this policy priority, we have concluded that it is not necessary to prepare a Family Policymaking Assessment.

List of Subjects in 45 CFR Part 1370

Administrative practice and procedure, Domestic Violence, Grant Programs—Social Programs, Reporting and recordkeeping requirements, Technical assistance.

(Catalog of Federal Domestic Assistance Program Numbers: 93.671 Family Violence Prevention and Services/Grants for Domestic Violence Shelters and Supportive Services/Grants to States and Native American Tribes and Tribal Organizations; 93.591 Family Violence Prevention and Services/Grants to

State Domestic Violence Coalitions; and 93.592 Family Violence Prevention and Services/Discretionary Grants)

Dated: July 26, 2016.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

Approved: July 29, 2016.

Sylvia M. Burwell,

Secretary.

Note: This document was received by the Office of the Federal Register on October 25, 2016.

For the reasons set forth in the preamble, title 45 CFR part 1370 is revised to read as follows:

■ 1. Revise part 1370 to read as follows:

PART 1370—FAMILY VIOLENCE PREVENTION AND SERVICES PROGRAMS

Subpart A—General Provisions

Sec.

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1370.2 What definitions apply to these programs?
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Subpart B—State and Indian Tribal Grants

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Authority: 42 U.S.C. 10401 *et seq.*

Subpart A—General Provisions

§ 1370.1 What are the purposes of the Family Violence Prevention and Services Act Programs?

This part addresses sections 301 through 313 of the Family Violence Prevention and Services Act (FVPSA), as amended, and codified at 42 U.S.C. 10401 *et seq.* FVPSA authorizes the Secretary to implement programs for the purposes of increasing public awareness about and preventing family violence, domestic violence, and dating violence; providing immediate shelter and supportive services for victims of family violence, domestic violence, and dating violence and their dependents; providing for technical assistance and training relating to family violence, domestic violence, and dating violence programs; providing for State Domestic Violence Coalitions; providing specialized services for abused parents and their children; and operating a national *domestic violence* hotline. FVPSA emphasizes both primary, and secondary, prevention of violence.

§ 1370.2 What definitions apply to these programs?

For the purposes of this part:

Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: The length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. This part of the definition reflects the definition also found in Section 40002(a) of VAWA (as amended), 42 U.S.C. 13925(a), as required by FVPSA. Dating violence also includes but is not limited to the physical, sexual, psychological, or emotional violence within a dating relationship, including stalking. It can happen in person or electronically, and may involve financial abuse or other forms of manipulation which may occur between a current or former dating partner regardless of actual or perceived sexual orientation or gender identity.

Domestic violence means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. This definition also reflects the statutory definition of ''domestic violence'' found in Section 40002(a) of VAWA (as amended), 42 U.S.C. 13925(a). This definition also includes but is not limited to criminal or non-criminal acts constituting intimidation, control, coercion and coercive control, emotional and psychological abuse and behavior, expressive and psychological aggression, financial abuse, harassment, tormenting behavior, disturbing or alarming behavior, and additional acts recognized in other Federal, Tribal State, and local laws as well as acts in other Federal regulatory or sub-regulatory guidance. This definition is not intended to be interpreted more restrictively than FVPSA and VAWA but rather to be inclusive of other, more expansive definitions. The definition applies to individuals and relationships regardless of actual or perceived sexual orientation or gender identity.

Family violence means any act or threatened act of violence, including any forceful detention of an individual, that results or threatens to result in physical injury and is committed by a person against another individual, to or with whom such person is related by blood or marriage, or is or was otherwise legally related, or is or was lawfully residing.

Personally identifying information (PII) or personal information is individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including, a first and last name; a home or other physical address; contact information (including a postal, email or Internet protocol address, or telephone or facsimile number); a social security number, driver license number, passport number, or student identification number; and any other information, including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify any individual.

Primary prevention means strategies, policies, and programs to stop both first-time perpetration and first-time victimization. Primary prevention is stopping domestic and dating violence before they occur. Primary prevention includes, but is not limited to: School-based violence prevention curricula, programs aimed at mitigating the effects on children of witnessing domestic or dating violence, community campaigns designed to alter norms and values conducive to domestic or dating violence, worksite prevention programs, and training and education in parenting skills and self-esteem enhancement.

Primary-purpose domestic violence service provider, for the term only as it appears in the definition of State Domestic Violence Coalition, means an entity that operates a project of demonstrated effectiveness carried out by a nonprofit, nongovernmental, private entity, Tribe, or Tribal organization, that has as its project's primary-purpose the operation of shelters and supportive services for victims of domestic violence and their dependents; or has as its project's primary purpose counseling, advocacy, or self-help services to victims of domestic violence. Territorial Domestic Violence Coalitions may include government-operated domestic violence projects as primary-purpose domestic violence service providers for complying with the membership requirement, provided that Territorial Coalitions can document providing training, technical assistance, and capacity-building of community-based and privately operated projects to provide shelter and supportive services to victims of family, domestic, or dating violence, with the intention of recruiting such projects as members once they are sustainable as primary-purpose domestic violence service providers.

Secondary prevention is identifying risk factors or problems that may lead to future family, domestic, or dating violence, and taking the necessary actions to eliminate the risk factors and the potential problem, and may include, but are not limited to, healing services for children and youth who have been exposed to domestic or dating violence, home visiting programs for high-risk families, and screening programs in health care settings.

Shelter means the provision of temporary refuge in conjunction with supportive services in compliance with applicable State or Tribal law or regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and supportive services to victims of family violence, domestic violence, or dating violence, and their dependents. State and Tribal law governing the provision of shelter and supportive services on a regular basis is interpreted by ACF to mean, for example, the laws and regulations applicable to zoning, fire safety, and other regular safety, and operational requirements, including State, Tribal, or local regulatory standards for certifying domestic violence advocates who work in shelter. This definition also includes emergency shelter and immediate shelter, which may include housing provision, rental subsidies, temporary refuge, or lodging in properties that could be individual units for families and individuals (such as apartments) in multiple locations around a local jurisdiction, Tribe/reservation, or State; such properties are not required to be owned, operated, or leased by the program. Temporary refuge includes a residential service, including shelter and off-site services such as hotel or motel vouchers or individual dwellings, which is not transitional or permanent housing, but must also provide comprehensive supportive services. The mere act of making a referral to shelter or housing shall not itself be considered provision of shelter. Should other jurisdictional laws conflict with this definition of temporary refuge, the definition which provides more expansive housing accessibility governs.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and, except as otherwise provided in statute, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

State Domestic Violence Coalition means a Statewide, nongovernmental, nonprofit 501(c)(3) organization whose membership includes a majority of the primary-purpose domestic violence service providers in the State; whose board membership is representative of these primary-purpose domestic violence service providers and which may include representatives of the communities in which the services are being provided in the State; that has as its purpose to provide education, support, and technical assistance to such service providers to enable the providers to establish and maintain supportive services and to provide shelter to victims of domestic violence and their children; and that serves as an information clearinghouse, primary point of contact, and resource center on domestic violence for the State and supports the development of policies, protocols and procedures to enhance domestic violence intervention and prevention in the State/Territory.

Supportive services means services for adult and youth victims of family violence, domestic violence, or dating violence, and their dependents that are designed to meet the needs of such victims and their dependents for short-term, transitional, or long-term safety and recovery. Supportive services include, but are not limited to: Direct and/or referral-based advocacy on behalf of victims and their dependents, counseling, case management, employment services, referrals, transportation services, legal advocacy or assistance, child care services, health, behavioral health and preventive health services, culturally and linguistically appropriate services, and other services that assist victims or their dependents in recovering from the effects of the violence. To the extent not already described in this definition, supportive services also include but are not limited to other services identified in FVPSA at 42 U.S.C. 10408(b)(1)(A)–(H). Supportive services may be directly provided by grantees and/or by providing advocacy or referrals to assist victims in accessing such services.

Underserved populations means populations who face barriers in accessing and using victim services, and includes populations underserved because of geographic location, religion, sexual orientation, gender identity, underserved racial and ethnic populations, and populations underserved because of special needs including language barriers, disabilities, immigration status, and age. Individuals with criminal histories due to victimization and individuals with substance use disorders and mental health issues are also included in this definition. The reference to racial and ethnic populations is primarily directed toward racial and ethnic minority groups (as defined in section 1707(g) of the Public Health Service Act (42 U.S.C. 300(u–6)(g)), which means American Indians (including Alaska Natives, Eskimos, and Aleuts); Asian American; Native Hawaiians and other Pacific Islanders; Blacks and Hispanics. The term ''Hispanic'' or ''Latino'' means individuals whose origin is Mexican, Puerto Rican, Cuban, Central or South American, or any other Spanish-speaking country. This underserved populations' definition also includes other population categories determined by the Secretary or the Secretary's designee to be underserved.

§ 1370.3 What Government-wide and HHS-wide regulations apply to these programs?

(a) A number of government-wide and HHS regulations apply or potentially apply to all grantees. These include but are not limited to:

(1) 2 CFR part 182—Government-wide Requirements for Drug Free Workplaces;

(2) 2 CFR part 376—Nonprocurement Debarment and Suspension;

(3) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board;

(4) 45 CFR part 30—Claims Collection;

(5) 45 CFR part 46—Protection of Human Subjects;

(6) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles and Audit Requirements for HHS Awards

(7) 45 CFR part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964;

(8) 45 CFR part 81—Practice and Procedure for Hearings under part 80;

(9) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance;

(10) 45 CFR part 86—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance;

(11) 45 CFR part 87—Equal Treatment for Faith-Based Organizations;

(12) 45 CFR part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance for HHS;

(13) 45 CFR part 92—Nondiscrimination in Health Programs and Activities; and

(14) 45 CFR part 93—New Restrictions on Lobbying.

(b) A number of government-wide and HHS regulations apply to all contractors. These include but are not limited to:

(15) 48 CFR Chapter 1—Federal Acquisition Regulations; and

(16) 48 CFR Chapter 3—Federal Acquisition Regulations—Department of Health and Human Services.

§ 1370.4 What confidentiality requirements apply to these programs?

(a) In order to ensure the safety of adult, youth, and child victims of family violence, domestic violence, or dating violence, and their families, grantees and subgrantees under FVPSA shall protect the confidentiality and privacy of such victims and their families. Subject to paragraphs (c), (d), and (e) of this section, grantees and subgrantees shall not—

(1) Disclose any personally identifying information (as defined in § 1370.2) collected in connection with services requested (including services utilized or denied) through grantees' and subgrantees' programs;

(2) Reveal any personally identifying information without informed, written, reasonably time-limited consent by the person about whom information is sought, whether for this program or any other Federal, Tribal or State grant program, including but not limited to whether to comply with Federal, Tribal, or State reporting, evaluation, or data collection requirements; or

(3) Require an adult, youth, or child victim of family violence, domestic violence, and dating violence to provide a consent to release his or her personally identifying information as a condition of eligibility for the services provided by the grantee or subgrantee.

(b) Consent shall be given by the person, except in the case of an unemancipated minor it shall be given by both the minor and the minor's parent or guardian; or in the case of an individual with a guardian it shall be given by the individual's guardian. A parent or guardian may not give consent if: he or she is the abuser or suspected abuser of the minor or individual with a guardian; or, the abuser or suspected abuser of the other parent of the minor. If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may release information without additional consent. Reasonable accommodations shall also be made for those who may be unable, due to disability or other functional limitation, to provide consent in writing.

(c) If the release of information described in paragraphs (a) and (b) of this section is compelled by statutory or court mandate:

(1) Grantees and sub-grantees shall make reasonable attempts to provide notice to victims affected by the release of the information; and

(2) Grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

(d) Grantees and subgrantees may share:

(1) Non-personally identifying information, in the aggregate, regarding services to their clients and demographic non-personally identifying information in order to comply with Federal, State, or Tribal reporting, evaluation, or data collection requirements;

(2) Court-generated information and law enforcement-generated information contained in secure, governmental registries for protective order enforcement purposes; and

(3) Law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes.

(4) Personally identifying information may be shared with a health care provider or payer, but only with the informed, written, reasonably time-limited consent of the person about whom such information is sought.

(e) Nothing in this section prohibits a grantee or subgrantee, where mandated or expressly permitted by the State or Indian Tribe, from reporting abuse and neglect, as those terms are defined by law, or from reporting imminent risk of serious bodily injury or death of the victim or another person.

(f) Nothing in this section shall be construed to supersede any provision of any Federal, State, Tribal, or local law that provides greater protection than this section for victims of family violence, domestic violence, or dating violence.

(g) The address or location of any shelter facility assisted that maintains a confidential location shall, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public.

(1) Shelters which choose to remain confidential pursuant to this rule must develop and maintain systems and protocols to remain secure, which must include policies to respond to disruptive or dangerous contact from abusers, and

(2) Tribal governments, while exercising due diligence to comply with statutory provisions and this rule, may determine how best to maintain the safety and confidentiality of shelter locations.

§ 1370.5 What additional non-discrimination requirements apply to these programs?

(a) No person shall on the ground of actual or perceived sex, including gender identity, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part through FVPSA.

(1) FVPSA grantees and subgrantees must provide comparable services to victims regardless of actual or perceived sex, including gender identity. This includes not only providing access to services for all victims, including male victims, of family, domestic, and dating violence regardless of actual or perceived sex, including gender identity, but also making sure not to limit services for victims with adolescent children (under the age of 18) on the basis of the actual or perceived sex, including gender identity, of the children. Victims and their minor children must be sheltered or housed together, regardless of actual or perceived sex, including gender identity, unless requested otherwise or unless the factors or considerations identified in § 1370.5(a)(2) require an exception to this general rule.

(2) No such program or activity is required to include an individual in such program or activity without taking into consideration that individual's sex in those certain instances where sex is a bona fide occupational qualification or a programmatic factor reasonably

necessary to the essential operation of that particular program or activity. If sex segregation or sex-specific programming is essential to the normal or safe operation of the program, nothing in this paragraph shall prevent any such program or activity from consideration of an individual's sex. In such circumstances, grantees and subgrantees may meet the requirements of this paragraph by providing comparable services to individuals who cannot be provided with the sex-segregated or sex-specific programming, including access to a comparable length of stay, supportive services, and transportation as needed to access services. If a grantee or subgrantee determines that sex-segregated or sex-specific programming is essential for the normal or safe operation of the program, it must support its justification with an assessment of the facts and circumstances surrounding the specific program, including an analysis of factors discussed in paragraph (a)(3) of this section, and take into account established field-based best practices and research findings, as applicable. The justification cannot rely on unsupported assumptions or overly-broad sex-based generalizations. An individual must be treated consistent with their gender identity in accordance with this section.

(3) Factors that may be relevant to a grantee's or subgrantee's evaluation of whether sex-segregated or sex-specific programming is essential to the normal or safe operations of the program include, but are not limited, to the following: The nature of the service, the anticipated positive and negative consequences to all eligible beneficiaries of not providing the program in a sex-segregated or sex-specific manner, the literature on the efficacy of the service being sex-segregated or sex-specific, and whether similarly-situated grantees and subgrantees providing the same services have been successful in providing services effectively in a manner that is not sex-segregated or sex-specific. A grantee or subgrantee may not provide sex-segregated or sex-specific services for reasons that are trivial or based on the grantee's or subgrantee's convenience.

(4) As with all individuals served, transgender and gender nonconforming individuals must have equal access to FVPSA-funded shelter and nonresidential programs. Programmatic accessibility for transgender and gender nonconforming survivors and minor children must be afforded to meet individual needs consistent with the individual's gender identity. ACF requires that a FVPSA grantee or subgrantee that makes decisions about eligibility for or placement into single-sex emergency shelters or other facilities offer every individual an assignment consistent with their gender identity. For the purpose of assigning a service beneficiary to sex-segregated or sex-specific services, the grantee/subgrantee may ask a beneficiary which group or services the beneficiary wishes to join. The grantee/subgrantee may not, however, ask questions about the beneficiary's anatomy or medical history or make demands for identity documents or other documentation of gender. A victim's/beneficiary's or potential victim's/beneficiary's request for an alternative or additional accommodation for purposes of personal health, privacy, or safety must be given serious consideration in making the placement. For instance, if the potential victim/beneficiary requests to be placed based on his or her sex assigned at birth, ACF requires that the provider will place the individual in accordance with that request, consistent with health, safety, and privacy concerns of the individual. ACF also requires that a provider will not make an assignment or re-assignment of the transgender or gender nonconforming individual based on complaints of another person when the sole stated basis of the complaint is a victim/client or potential victim/client's non-conformance with gender stereotypes or sex, including gender identity.

(b) An organization that participates in programs funded through the FVPSA shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(1) Dietary practices dictated by particular religious beliefs may require reasonable accommodation in cooking or feeding arrangements for particular beneficiaries as practicable. Additionally, other forms of religious practice may require reasonable accommodation including, but not limited to, shelters that have cleaning schedules may need to account for a survivor's religion which prohibits him/her from working on religious holidays.

(c) No person shall on the ground of actual or perceived sexual orientation be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part through FVPSA.

(1) All programs must take into account participants' needs and be inclusive and not stigmatize participants based on actual or perceived sexual orientation.

(d) All FVPSA-funded services must be provided without requiring documentation of immigration status because HHS has determined that FVPSA-funded services do not fall within the definition of federal public benefit that would require verification of immigration status.

(e) Grantees and subgrantees should create a plan to ensure effective communication and equal access, including:

(1) How to identify and communicate with individuals with Limited English Proficiency, and how to identify and properly use qualified interpretation and translation services, and taglines; and

(2) How to take appropriate steps to ensure that communications with applicants, participants, beneficiaries, members of the public, and companions with disabilities are as effective as communications with others; and furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, beneficiaries, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity. Auxiliary aids and services include qualified interpreters and large print materials.

(f) Nothing in this section shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals under other applicable law.

(g) The Secretary shall enforce the provisions of paragraphs (a) and (b) of this section in accordance with section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1). Section 603 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2) shall apply with respect to any action taken by the Secretary to enforce this section.

§ 1370.6 What requirements for reports and evaluations apply to these programs?

Each entity receiving a grant or contract under these programs shall submit a performance report to the Secretary at such time as required by the Secretary. Such performance report shall describe the activities that have been carried out, contain an evaluation of the effectiveness of such activities, and provide such additional information as the Secretary may require. Territorial governments which consolidate FVPSA funds with other HHS funds in a Consolidated Block Grant pursuant to 45 CFR part 97 are not required to submit annual FVPSA

performance progress reports and programmatic assurances if FVPSA funds are not designated in the consolidation application for FVPSA purposes. If a territorial government either does not consolidate FVPSA funds with other HHS funds or does consolidate but indicates that FVPSA funds will be used for FVPSA purposes, the territorial government must submit an annual FVPSA performance progress report and programmatic assurances to FYSB.

Subpart B—State and Indian Tribal Grants

§ 1370.10 What additional requirements apply to State and Indian Tribal grants?

(a) These grants assist States and Tribes to support the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence, domestic violence, and dating violence; to provide immediate shelter, supportive services, and access to community-based programs for victims of family violence, domestic violence, or dating violence, and their dependents; and to provide specialized services for children exposed to family violence, domestic violence, or dating violence, including victims who are members of underserved populations. States must consult with and provide for the participation of State Domestic Violence Coalitions and Tribal Coalitions in the planning and monitoring of the distribution and administration of subgrant programs and projects. At a minimum to further FVPSA requirements, States and State Domestic Violence Coalitions will work together to determine grant priorities based upon jointly identified needs; to identify strategies to address needs; to define mutual expectations regarding programmatic performance and monitoring; and to implement an annual collaboration plan that incorporates concrete steps for accomplishing these tasks. If States also fund State Domestic Violence Coalitions to provide training, technical assistance, or other programming, nothing in this rule is intended to conflict with State contracting requirements regarding conflicts of interest but rather that this rule's requirements should be interpreted to complement States' contracting and procurement laws and regulations. States must involve community-based organizations that primarily serve underserved populations, including culturally- and linguistically-specific populations, to determine how such populations can assist the States in serving the unmet needs of underserved populations and culturally- and linguistically-specific populations. Tribes should be involved in these processes where appropriate, but this rule is not intended to encroach upon Tribal sovereignty. States also must consult with and provide for the participation of State Domestic Violence Coalitions and Tribal Coalitions in State planning and coordinate such planning with needs assessments to identify service gaps or problems and develop appropriate responsive plans and programs. Similar coordination and collaboration processes for Tribes and State Domestic Violence Coalitions are expected when feasible and appropriate with deference to Tribal sovereignty as previously indicated.

(b) A State application must be submitted by the Chief Executive of the State and signed by the Chief Executive Officer or the Chief Program Official designated as responsible for the administration of FVPSA. Each application must contain the following information or documentation:

(1) The name of the State agency, the name and contact information for the Chief Program Official designated as responsible for the administration of funds under FVPSA and coordination of related programs within the State, and the name and contact information for a contact person if different from the Chief Program Official;

(2) A plan describing in detail how the needs of underserved populations will be met, including:

(i) Identification of which populations in the State are underserved, a description of those that are being targeted for outreach and services, and a brief explanation of why those populations were selected to receive outreach and services, including how often the State revisits the identification and selection of the populations to be served with FVPSA funding. States must review their State demographics and other relevant metrics at least every three years or explain why this process is unnecessary;

(ii) A description of the outreach plan, including the domestic violence training to be provided, the means for providing technical assistance and support, and the leadership role played by those representing and serving the underserved populations in question;

(iii) A description of the specific services to be provided or enhanced, such as new shelters or services, improved access to shelters or services, or new services for underserved populations; and

(iv) A description of the public information component of the State's outreach program, including the elements of the program that are used to explain domestic violence, the most effective and safe ways to seek help, and tools to identify available resources; and

(v) A description of the means by which the program will provide meaningful access for limited English proficient individuals and effective communication for individuals with disabilities.

(3) A description of the process and procedures used to involve the State Domestic Violence Coalition and Tribal Coalition where one exists, knowledgeable individuals, and interested organizations, including those serving or representing underserved populations in the State planning process;

(4) Documentation of planning, consultation with and participation of the State Domestic Violence Coalition and Tribal Coalition where one exists, in the administration and distribution of FVPSA programs, projects, and grant funds awarded to the State;

(5) A description of the procedures used to assure an equitable distribution of grants and grant funds within the State and between urban and rural areas. States may use one of the Census definitions of rural or non-metro areas or another State-determined definition. A State-determined definition must be supported by data and be available for public input prior to its adoption. The State must show that the definition selected achieves an equitable distribution of funds within the State and between urban and rural areas. The plan should describe how funding processes and allocations will address the needs of underserved populations as defined in § 1370.2, including Tribal populations, with an emphasis on funding organizations that can meet unique needs including culturally- and linguistically-specific populations. Other Federal, State, local, and private funds may be considered in determining compliance;

(6) A description of:

(i) how the State plans to use the grant funds including a State plan developed in consultation with State and Tribal Domestic Violence Coalitions and representatives of underserved populations;

(ii) the target populations;

(iii) the number of shelters and programs providing shelter to be funded;

(iv) the number of non-residential programs to be funded; the services the State will provide; and

(v) the expected results from the use of the grant funds. To fulfill these requirements, it is critically important that States work with State Domestic

Violence Coalitions and Tribes to solicit their feedback on program effectiveness which may include recommendations such as establishing program standards and participating in program monitoring;

(7) An assurance that the State has a law or procedure to bar an abuser from a shared household or a household of the abused person, which may include eviction laws or procedures, where appropriate;

(8) An assurance that not less than 70 percent of the funds distributed by a State to sub-recipients shall be distributed to entities for the primary purpose of providing immediate shelter and supportive services to adult and youth victims of family violence, domestic violence, or dating violence, and their dependents, and that not less than 25 percent of the funds distributed by a State to subgrantees/recipients shall be distributed to entities for the purpose of providing supportive services and prevention services (these percentages may overlap with respect to supportive services but are not included in the 5 percent cap applicable to State administrative costs). In the distribution of funds, States will give special emphasis to the support of community-based projects of demonstrated effectiveness that are carried out by primary-purpose domestic violence providers. No grant shall be made under this section to an entity other than a State unless the entity agrees that, with respect to the costs to be incurred by the entity in carrying out the program or project for which the grant is awarded, the entity will make available (directly or through donations from public or private entities) non-Federal contributions in an amount that is not less than $1 for every $5 of Federal funds provided under the grant. The non-Federal contributions required under this paragraph may be in cash or in kind;

(9) Documentation of policies, procedures and protocols that ensure individual identifiers of client records will not be used when providing statistical data on program activities and program services or in the course of grant monitoring, that the confidentiality of records pertaining to any individual provided family violence, domestic violence, or dating violence prevention or intervention services by any program or entity supported under the FVPSA will be strictly maintained, and the address or location of any shelter supported under the FVPSA will not be made public without the written authorization of the person or persons responsible for the operation of such shelter;

(10) Such additional agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe. Moreover, additional agreements, assurances, and information required by the Funding Opportunity Announcement and other program guidance will include that no requirement for participating in supportive services offered by FVPSA-funded programs may be imposed by grantees or subgrantees for the receipt of emergency shelter and receipt of all supportive services shall be voluntary. Similarly, the receipt of shelter cannot be conditioned on participation in other services, such as, but not limited to counseling, parenting classes, mental health or substance use disorders treatment, pursuit of specific legal remedies, or life skill classes. Additionally, programs cannot impose conditions for admission to shelter by applying inappropriate screening mechanisms, such as criminal background checks, sobriety requirements, requirements to obtain specific legal remedies, or mental health or substance use disorder screenings. An individual's or family's stay in shelter cannot be conditioned upon accepting or participating in services. Based upon the capacity of a FVPSA-funded service provider, victims and their dependents do not need to reside in shelter to receive supportive services. Nothing is these requirements prohibits a shelter operator from adopting reasonable policies and procedures reflecting field-based best practices, to ensure that persons receiving services are not currently engaging in illegal drug use, if that drug use presents a danger to the safety of others, creates an undue hardship for the shelter operator, or causes a fundamental alteration to the operator's services. In the case of an apparent conflict with State, Federal, or Tribal laws, case-by-case determinations will be made by ACF if they are not resolved at the State or Tribal level. In general, when two or more laws apply, a grantee/subgrantee must meet the highest standard for providing programmatic accessibility to victims and their dependents. These provisions are not intended to deny a shelter the ability to manage its services and secure the safety of all shelter residents should, for example, a client become violent or abusive to other clients.

(c) An application from a Tribe or Tribal Organization must include documentation demonstrating that the governing body of the organization on whose behalf the application is submitted approves the application's submission to ACF for the current FVPSA grant period. Each application must contain the following information or documentation:

(1) Written Tribal resolutions, meeting minutes from the governing body, and/or letters from the authorizing official reflecting approval of the application's submittal, depending on what is appropriate for the applicant's governance structure. Such documentation must reflect the applicant's authority to submit the application on behalf of members of the Tribes and administer programs and activities pursuant to FVPSA;

(2) The resolution or equivalent documentation must specify the name(s) of the Tribe(s) on whose behalf the application is submitted and the service areas for the intended grant services;

(3) Applications from consortia must provide letters of commitment, memoranda of understanding, or their equivalent identifying the primary applicant that is responsible for administering the grant, documenting commitments made by partnering eligible applicants, and describing their roles and responsibilities as partners in the consortia or collaboration;

(4) A description of the procedures designed to involve knowledgeable individuals and interested organizations in providing services under the FVPSA. For example, knowledgeable individuals and interested organizations may include Tribal officials or social services staff involved in child abuse or family violence prevention, Tribal law enforcement officials, representatives of Tribal or State Domestic Violence Coalitions, and operators of domestic violence shelters and service programs;

(5) A description of the applicant's operation of and/or capacity to carry out a family violence prevention and services program. This might be demonstrated in ways such as:

(i) The current operation of a shelter, safe house, or domestic violence prevention program;

(ii) The establishment of joint or collaborative service agreements with a local public agency or a private, non-profit agency for the operation of family violence prevention and intervention activities or services; or

(iii) The operation of social services programs as evidenced by receipt of grants or contracts awarded under Indian Child Welfare grants from the Bureau of Indian Affairs; Child Welfare Services grants under Title IV–B of the Social Security Act; or Family Preservation and Family Support grants under Title IV–B of the Social Security Act.

(6) A description of the services to be provided, how the applicant organization plans to use the grant funds to provide the direct services, to whom the services will be provided, and the expected results of the services;

(7) An assurance that the Indian Tribe has a law or procedure to bar an abuser from a shared household or a household of the abused person, which may include eviction laws or procedures, where appropriate;

(8) Documentation of the policies and procedures developed and implemented, including copies of the policies and procedures, to ensure that individual identifiers of client records will not be used when providing statistical data on program activities and program services or in the course of grant monitoring and that the confidentiality of records pertaining to any individual provided domestic violence prevention or intervention services by any FVPSA-supported program will be strictly maintained; and

(9) Such agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe.

(d) Given the unique needs of victims of trafficking, FVPSA-funded programs are strongly encouraged to safely screen for and identify victims of human trafficking who are also victims or survivors of domestic violence or dating violence and provide services that support their unique needs.

Subpart C—State Domestic Violence Coalition Grants

§ 1370.20 What additional requirements apply to State Domestic Violence Coalitions?

(a) State Domestic Violence Coalitions reflect a Federal commitment to reducing domestic violence; to urge States, localities, cities, and the private sector to improve the responses to and the prevention of domestic violence and encourage stakeholders and service providers to plan toward an integrated service delivery approach that meets the needs of all victims, including those in underserved communities; to provide for technical assistance and training relating to domestic violence programs; and to increase public awareness about and prevention of domestic violence and increase the quality and availability of shelter and supportive services for victims of domestic violence and their dependents.

(b) To be eligible to receive a grant under this section, an organization shall be a Statewide, non-governmental, non-profit 501(c)(3) domestic violence coalition, designated as such by the Department. To obtain this designation the organization must meet the following criteria:

(1) The membership must include representatives from a majority of the primary-purpose domestic violence service providers operating within the State (a Coalition also may include representatives of Indian Tribes and Tribal organizations as defined in the Indian Self-Determination and Education Assistance Act);

(2) The Board membership of the Coalition must be representative of such programs, and may include representatives of communities in which the services are being provided in the State;

(3) Financial sustainability of State Domestic Violence Coalitions, as independent, autonomous non-profit organizations, also must be supported by their membership, including those member representatives on the Coalitions' Boards of Directors;

(4) The purpose of a State Domestic Violence Coalition is to provide education, support, and technical assistance to such service providers to enable the providers to establish and maintain shelter and supportive services for victims of domestic violence and their dependents; and to serve as an information clearinghouse, primary point of contact, and resource center on domestic violence for the State; and support the development of polices, protocols, and procedures to enhance domestic violence intervention and prevention in the State.

(c) To apply for a grant under this section, an organization shall submit an annual application that:

(1) Includes a complete description of the applicant's plan for the operation of a State Domestic Violence Coalition, including documentation that the Coalition's work will demonstrate the capacity to support state-wide efforts to improve system responses to domestic and dating violence as outlined in (c)(1)(i) through (vii) of this section. Coalitions must also have documented experience in administering Federal grants to conduct the activities of a Coalition or a documented history of active participation in:

(i) Working with local family violence, domestic violence, and dating violence service programs and providers of direct services to encourage appropriate and comprehensive responses to family violence, domestic violence, and dating violence against adults or youth within the State involved, including providing training and technical assistance and conducting State needs assessments and participate in planning and monitoring of the distribution of subgrants within the States and in the administration of grant programs and projects;

(ii) In conducting needs assessments, Coalitions and States must work in partnership on the statutorily required FVPSA State planning process to involve representatives from underserved populations and culturally- and linguistically-specific populations to plan, assess and voice the needs of the communities they represent. Coalitions will assist States in identifying underserved populations and culturally- and linguistically-specific community based organizations in State planning and to work with States to unify planning and needs assessment efforts so that comprehensive and culturally-specific services are provided. The inclusion of the populations targeted will emphasize building the capacity of culturally- and linguistically-specific services and programs.

(iii) Working in collaboration with service providers and community-based organizations to address the needs of family violence, domestic violence, and dating violence victims, and their dependents, who are members of underserved populations and culturally- and linguistically-specific populations;

(iv) Collaborating with and providing information to entities in such fields as housing, health care, mental health, social welfare, or business to support the development and implementation of effective policies, protocols, and programs that address the safety and support needs of adult and youth victims of family violence, domestic violence, or dating violence;

(v) Encouraging appropriate responses to cases of family violence, domestic violence, or dating violence against adults or youth, including by working with judicial and law enforcement agencies;

(vi) Working with family law judges, criminal court judges, child protective service agencies, and children's advocates to develop appropriate responses to child custody and visitation issues in cases of child exposure to family violence, domestic violence, or dating violence and in cases in which family violence, domestic violence, or dating violence is present and child abuse is present;

(vii) Providing information to the public about prevention of family violence, domestic violence, and dating violence, including information targeted to underserved populations, including limited English proficient individuals; and

(viii) Collaborating with Indian Tribes and Tribal organizations (and corresponding Native Hawaiian groups or communities) to address the needs of Indian (including Alaska Native) and Native Hawaiian victims of family violence, domestic violence, or dating violence, as applicable in the State;

(2) Contains such agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe.

(d) Nothing in this section limits the ability of a Coalition to use non-Federal or other Federal funding sources to conduct required functions, provided that if the Coalition uses funds received under section 2001(c)(1) of the Omnibus Crime Control and Safe Streets Act of 1968 to perform the functions described in FVPSA at 42 U.S.C. 10411(e) in lieu of funds provided under the FVPSA, it shall provide an annual assurance to the Secretary that it is using such funds, and that it is coordinating the activities conducted under this section with those of the State's activities under Part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968.

(e) In cases in which two or more organizations seek designation, the designation of each State's individual Coalition is within the exclusive discretion of HHS. HHS will determine which applicant best fits statutory criteria, with particular attention paid to the applicant's documented history of effective work, support of primary-purpose domestic violence service providers and programs that serve underserved populations, coordination and collaboration with the State government, and capacity to accomplish the FVPSA-mandated role of a Coalition.

(f) Regarding FVPSA funding, in cases where a Coalition financially or otherwise dissolves, is newly formed, or merges with another entity, the designation of a new Coalition is within the exclusive discretion of HHS. HHS will seek individual feedback from domestic violence service providers, community stakeholders, State leaders, and representatives of underserved populations and culturally- and linguistically-specific populations to identify an existing organization that can serve as the Coalition or to develop a new organization. The new Coalition must reapply for designation and funding following steps determined by the Secretary. HHS will determine whether the applicant fits the statutory criteria, with particular attention paid to the applicant's documented history of effective work, support of primary-purpose domestic violence programs and programs that serve underserved populations, coordination and collaboration with the State government, and capacity to accomplish the FVPSA mandated role of a Coalition.

Subpart D—Discretionary Grants and Contracts

§ 1370.30 What National Resource Center and Training and Technical Assistance grant programs are available and what additional requirements apply?

(a) These grants are to provide resource information, training, and technical assistance to improve the capacity of individuals, organizations, governmental entities, and communities to prevent family violence, domestic violence, and dating violence and to provide effective intervention services. They fund national, special issue, and culturally-specific resource centers addressing key areas of domestic violence intervention and prevention, and may include State resource centers to reduce disparities in domestic violence in States with high proportions of Native American (including Alaska Native or Native Hawaiian) populations and to support training and technical assistance that address emerging issues related to family violence, domestic violence, or dating violence, to entities demonstrating expertise in these areas. Grants may be made for:

(1) A National Resource Center on Domestic Violence which will conduct the following activities:

(i) offer a comprehensive array of technical assistance and training resources to Federal, State, and local governmental agencies, domestic violence service providers, community-based organizations, and other professionals and interested parties, related to domestic violence service programs and research, including programs and research related to victims and their children who are exposed to domestic violence; and

(ii) Maintain a central resource library in order to collect, prepare, analyze, and disseminate information and statistics related to the incidence and prevention of family violence and domestic violence; and the provision of shelter, supportive services, and prevention services to adult and youth victims of domestic violence (including services to prevent repeated incidents of violence).

(2) A National Indian Resource Center Addressing Domestic Violence and Safety for Indian Women which will conduct the following activities:

(i) Offer a comprehensive array of technical assistance and training resources to Indian Tribes and Tribal organizations, specifically designed to enhance the capacity of the Tribes and Tribal organizations to respond to domestic violence and increase the safety of Indian women; and

(ii) Enhance the intervention and prevention efforts of Indian Tribes and Tribal organizations to respond to domestic violence and increase the safety of Indian women, and

(iii) To coordinate activities with other Federal agencies, offices, and grantees that address the needs of Indians (including Alaska Natives) and Native Hawaiians that experience domestic violence.

(3) Special issue resource centers to provide national information, training, and technical assistance to State and local domestic violence service providers. Each special issue resource center shall focus on enhancing domestic violence intervention and prevention efforts in at least one of the following areas:

(i) Response of the criminal and civil justice systems to domestic violence victims, which may include the response to the use of the self-defense plea by domestic violence victims and the issuance and use of protective orders;

(ii) Response of child protective service agencies to victims of domestic violence and their dependents and child custody issues in domestic violence cases;

(iii) Response of the interdisciplinary health care system to victims of domestic violence and access to health care resources for victims of domestic violence; and

(iv) Response of mental health systems, domestic violence service programs, and other related systems and programs to victims of domestic violence and to their children who are exposed to domestic violence.

(4) Culturally-Specific Special Issue Resource Centers enhance domestic violence intervention and prevention efforts for victims of domestic violence who are members of racial and ethnic minority groups, to enhance the cultural and linguistic relevancy of service delivery, resource utilization, policy, research, technical assistance, community education, and prevention initiatives.

(5) State resource centers to provide Statewide information, training, and technical assistance to Indian Tribes, Tribal organizations, and local domestic violence service organizations serving Native Americans (including Alaska Natives and Native Hawaiians) in a culturally sensitive and relevant manner. These centers shall:

(i) Offer a comprehensive array of technical assistance and training resources to Indian Tribes, Tribal organizations, and providers of services to Native Americans (including Alaska Natives and Native Hawaiians) specifically designed to enhance the capacity of the Tribes, organizations, and providers to respond to domestic violence, including offering the resources in States in which the population of Indians (including Alaska Natives) or Native Hawaiians exceeds 2.5 percent of the total population of the State;

(ii) Coordinate all projects and activities with the National Indian Resource Center Addressing Domestic Violence and Safety for Indian Women, including projects and activities that involve working with State and local governments to enhance their capacity to understand the unique needs of Native Americans (including Alaska Natives and Native Hawaiians); and

(iii) Provide comprehensive community education and domestic violence prevention initiatives in a culturally sensitive and relevant manner; and

(iv) Otherwise meet certain eligibility requirements for state resource centers to reduce tribal disparities, pursuant to 42 U.S.C. 10410(c)(4).

(6) Other discretionary purposes to support training and technical assistance that address emerging issues related to family violence, domestic violence, or dating violence, to entities demonstrating related experience.

(b) To receive a grant under any part of this section, an entity shall submit an application that shall meet such eligibility standards as are prescribed in the FVPSA and contains such agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe.

§ 1370.31 What additional requirements apply to grants for specialized services for abused parents and their children?

(a) These grants serve to expand the capacity of family violence, domestic violence, and dating violence service programs and community-based programs to prevent future domestic violence by addressing, in an appropriate manner, the needs of children exposed to family violence, domestic violence, or dating violence. To be eligible an entity must be a local agency, a nonprofit private organization (including faith-based and charitable organizations, community-based organizations, and voluntary associations), or a Tribal organization, with a demonstrated record of serving victims of family violence, domestic violence, or dating violence and their children.

(b) To be eligible to receive a grant under this section, an entity shall submit an application that:

(1) Includes a complete description of the applicant's plan for providing specialized services for abused parents and their children, including descriptions of:

(i) How the entity will prioritize the safety of, and confidentiality of, information about victims of family violence, victims of domestic violence, and victims of dating violence and their children, and will comply with the confidentiality requirements of FVPSA, 42 U.S.C. 10406(c)(5) and this rule at § 1370.4;

(ii) How the entity will provide developmentally appropriate and age-appropriate services, and culturally and linguistically appropriate services, to the victims and children;

(iii) How the entity will ensure that professionals working with the children receive the training and technical assistance appropriate and relevant to the unique needs of children exposed to family violence, domestic violence, or dating violence; and

(iv) How, in the case of victims who choose to or by virtue of their circumstances must remain in contact with an abusive partner/parent, the entity will: consider the victim's decision-making for keeping children safe within the continuum of domestic violence (see the definition of domestic violence in the regulatory text at § 1370.2 which describes the potential range of behaviors constituting domestic violence); not place burdens or demands on the non-abusive parent that the parent cannot comply with due to the coercive control of the offender; and take precautions to avoid actions that discourage victims from help-seeking, such as making unnecessary referrals to child protective services when survivors go to community-based organizations for assistance in safety planning to protect children.

(2) Demonstrates that the applicant has the ability to effectively provide, or partner with an organization that provides, direct counseling, appropriate services, and advocacy on behalf of victims of family violence, domestic violence, or dating violence, and their children, including coordination with services provided by the child welfare system, schools, health care providers, home visitors, family court systems, and any other child or youth serving system;

(3) Demonstrates that the applicant can effectively provide services for non-abusing parents to support those parents' roles as caregivers and their roles in responding to the social, emotional, and developmental needs of their children; and

(4) Contains such agreements, assurances, and information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe.

(c) Eligible applicants may use funds under a grant pursuant to this section:

(1) To provide early childhood development and mental health services;

(2) To coordinate activities with and provide technical assistance to community-based organizations serving victims of family violence, domestic violence, or dating violence or children exposed to family violence, domestic violence, or dating violence; and

(3) To provide additional services and referrals to services for children, including child care, transportation, educational support, respite care, supervised visitation, or other necessary services.

(d) If Congressional appropriations in any fiscal year for the entirety of programs covered in this part (exclusive of the National Domestic Violence Hotline which receives a separate appropriation) exceed $130 million, not less than 25 percent of such excess funds shall be made available to carry out this grant program. If appropriations reach this threshold, HHS will specify funding levels in future Funding Opportunity Announcements.

§ 1370.32 What additional requirements apply to National Domestic Violence Hotline grants?

(a) These grants are for one or more private entities to provide for the ongoing operation of a 24-hour, national, toll-free telephone hotline to provide information and assistance to adult and youth victims of family violence, domestic violence, or dating violence, family and household members of such victims, and persons affected by the victimization.

(b) Telephone is defined as a communications device that permits two or more callers or users to engage in transmitted analog, digital, short message service (SMS), cellular/wireless, laser, cable/broadband, internet, voice-over internet protocol (IP), video, or other communications, including telephone, smartphone, chat, text, voice recognition, or other technological means which connects callers or users together.

(c) To be eligible to receive a grant under this section, an entity shall submit an application that:

(1) Includes a complete description of the applicant's plan for the operation of a national domestic violence telephone hotline, including descriptions of:

(i) The training program for hotline personnel, including technology training to ensure that all persons affiliated with the hotline are able to effectively operate any technological systems used by the hotline, and are familiar with effective communication and equal access requirements, to ensure access for all, including people who are Limited English Proficient and people with disabilities;

(ii) The hiring criteria and qualifications for hotline personnel;

(iii) The methods for the creation, maintenance, and updating of a resource database;

(iv) A plan for publicizing the availability of the hotline;

(v) A plan for providing service such as advocacy and supportive services to Limited English Proficient callers, including service through hotline personnel who are qualified to interpret in non-English languages;

(vi) A plan for facilitating access to the hotline by persons with disabilities, including persons who are deaf or have hearing impairments; and

(vii) A plan for providing assistance and referrals to youth victims of domestic violence and for victims of dating violence who are minors, which may be carried out through a national teen dating violence hotline.

(2) Demonstrates that the applicant has recognized expertise in the area of family violence, domestic violence, or dating violence and a record of high quality service to victims of family violence, domestic violence, or dating violence, including a demonstration of support from advocacy groups and State Domestic violence Coalitions;

(3) Demonstrates that the applicant has the capacity and the expertise to maintain a domestic violence hotline and a comprehensive database of service providers;

(4) Demonstrates the ability to provide information and referrals for callers, directly connect callers to service providers, and employ crisis interventions meeting the standards of family violence, domestic violence, and dating violence providers;

(5) Demonstrates that the applicant has a commitment to diversity and to the provision of services to underserved populations, including to ethnic, racial, and Limited English Proficient individuals, in addition to older individuals and individuals with disabilities;

(6) Demonstrates that the applicant follows comprehensive quality assurance practices; and

(7) Contains such agreements, information, and assurances, including nondisclosure of confidential or private information, in such form, and submitted in such manner as the Funding Opportunity Announcement and related program guidance prescribe.

(d) The entity receiving a grant under this section shall submit a performance report to the Secretary at such time as reasonably required by the Secretary that shall describe the activities that have been carried out with grant funds, contain an evaluation of the effectiveness of such activities, and provide additional information as the Secretary may reasonably require.

[FR Doc. 2016–26063 Filed 10–28–16; 11:15 am]

BILLING CODE

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 212 November 2, 2016

Part IV

The President

Memorandum of September 30, 2016—Delegation of Authority Pursuant to Sections 5, 6(a) and 6(c), and 8(a) of the Global Food Security Act of 2016
Proclamation 9531—National College Application Month, 2016
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Federal Register
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Presidential Documents

Title 3—

The President

Memorandum of September 30, 2016

Delegation of Authority Pursuant to Sections 5, 6(a) and 6(c), and 8(a) of the Global Food Security Act of 2016

Memorandum for the Secretary of State [and] the Administrator of the United States Agency for International Development

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby order as follows:

I hereby delegate to the Administrator of the United States Agency for International Development the functions and authorities vested in the President by sections 5, 6(c), and 8(a) of the Global Food Security Act of 2016 (the ''Act'').

I hereby delegate to the Secretary of State and the Administrator of the United States Agency for International Development the functions and authorities vested in the President by section 6(a) of the Act.

These functions shall be exercised consistent with the Secretary of State's responsibility for the continuous supervision and general direction of assistance programs under section 2382 of title 22, United States Code, and lead role in coordinating U.S. assistance under section 6593 of title 22, United States Code.

Any reference in this memorandum to the Act shall be deemed to be a reference to any future act that is the same or substantially the same as such provisions.

The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, September 30, 2016

[FR Doc. 2016–26652
Filed 11–1–16; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Proclamation 9531 of October 28, 2016

National College Application Month, 2016

By the President of the United States of America

A Proclamation

In America, all people deserve an equal chance to succeed, and expanding access to affordable higher education is necessary for bringing us closer to fulfilling this ideal. Over the past several generations, our country built a strong middle class through a commitment to keeping a high-quality education within reach for all those willing to work for it, and now more than ever, a college degree is the surest path to the middle class. During National College Application Month, we encourage Americans to apply for a higher education, and we strive to ensure every student—no matter who they are or where they come from—has a chance at the opportunities they need to thrive.

My Administration is committed to giving students and their families important information on college admissions, value, and costs so they can make decisions that are right for them. Last year, we redesigned a new College Scorecard with direct input from students, families, and advisers to provide clear and accessible national data on college cost, graduation rates, debt, and post-college earnings. By visiting CollegeScorecard.Ed.gov, more Americans can evaluate college choices based on the factors that matter most to them. Through First Lady Michelle Obama's Reach Higher initiative, we are inspiring more students to pursue a higher education, ensuring they have what they need to complete their college education, and helping them understand their financial aid eligibility. And we are working to reduce barriers to educational opportunity through the Fair Chance Higher Education Pledge—an effort in which public and private colleges and universities are helping provide individuals with criminal records who have already paid their debt to society a fair chance to seek a higher education. To learn more about ways we are helping more Americans pursue a higher education, visit www.WhiteHouse.gov/ReachHigher.

Although earning a college degree is one of the most important investments individuals can make for themselves and for our country, it still feels out of reach for too many American families. That is why we have taken many steps to make college more affordable, including doubling investments in grant and scholarship aid through Pell Grants and tax credits, keeping interest rates low on Federal student loans, and helping borrowers manage debt after college through programs like the Pay as You Earn plan. This year, we launched the Free Application for Federal Student Aid—which is available at www.FAFSA.gov—3 months earlier than usual so that students can access financial aid sooner and receive better information as they search for and apply to colleges. And because every American at any age and from any walk of life should be able to earn the skills necessary to compete in the 21st-century economy, I have proposed making community college free for students with the drive and discipline to work for it.

This month, we recognize the limitless potential in every student and reaffirm our commitment to offering them the resources they need to succeed. We thank not only the teachers, counselors, and parents who support students throughout the college application process, but also the organizations and institutions partnering with us to eliminate unnecessary barriers to higher

education. Let us celebrate the progress we have made as more historically underserved students are enrolling in college for the first time, more students are graduating from college than ever before, and new student loan defaults are on the decline. And together, let us forge a future where every student has the opportunity to go as far as their dreams and hard work will take them.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2016 as National College Application Month. I call upon public officials, educators, parents, students, and all Americans to observe this month with appropriate ceremonies, activities, and programs designed to encourage students to make plans for and apply to college.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of October, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–26657
Filed 11–1–16; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Proclamation 9532 of October 28, 2016

National Diabetes Month, 2016

By the President of the United States of America

A Proclamation

More than 29 million Americans have diabetes—a disease in which the glucose levels in one's blood are higher than normal. Although the rate of new cases is falling, the numbers are still alarming. Diabetes is one of the leading causes of death in the United States and results in staggering health and financial costs for Americans. With a concentrated effort to reduce the number of new diagnoses and improve treatment and care for those living with this disease, we must continue making progress in the battle against this epidemic. Each year during National Diabetes Month, we resolve to support everyone battling this chronic disease, and we recommit to fighting it so that more Americans can lead a healthy life.

Diabetes can affect individuals of any age, gender, or background depending on risk factors, which can include a combination of genetics and lifestyle. Type 1 diabetes, often diagnosed in youth, affects people whose bodies do not produce enough insulin, a hormone needed to live. Type 2 diabetes occurs in people who are not able to produce enough insulin to meet their body's needs, and typically develops in adults—however, more young people today are being diagnosed with type 2 diabetes than ever before, and it is more commonly diagnosed among those who are obese or inactive. Both types can lead to health problems such as heart disease, blindness, and kidney failure. Additionally, roughly one-third of American adults have prediabetes—a condition in which their blood sugar levels are higher than normal, but not high enough to be diagnosed with diabetes—placing them at higher risk for other health conditions or for developing type 2 diabetes. Another form of diabetes, known as gestational diabetes, can develop in pregnant women, create complications during pregnancy, and increase chances of developing type 2 diabetes later in life for both mothers and their children.

Type 1 diabetes accounts for a smaller proportion of diagnosed cases of diabetes; over 90 percent of all diagnosed cases are type 2 diabetes. Individuals with type 1 diabetes need to monitor their blood sugar levels and take insulin every day to survive. Diabetes has no cure, but people with type 2 diabetes can manage their disease by following a healthy meal plan, increasing physical activity, taking prescribed medications, and quitting smoking if applicable. For individuals with prediabetes or overweight individuals at higher risk of diabetes, losing weight through healthy eating and regular physical activity can help prevent or delay type 2 diabetes. Americans with any type of diabetes should get regular checkups and work with health care professionals to learn more about this disease. Individuals at higher risk—particularly those who are overweight, older than 45, or have a family history of type 2 diabetes—should talk to their health care providers about their diabetes risk. African Americans, Hispanic Americans, American Indians, Asian Americans, and Pacific Islanders are also at higher risk of developing type 2 diabetes. I encourage all Americans to visit www.NDEP.NIH.gov to find resources available through the National Diabetes Education Program to help make and sustain healthy lifestyle and behavior changes.

Over the last 8 years, my Administration has worked to provide better care, prevention, and treatment for anyone suffering from diabetes. The Affordable Care Act (ACA) has required that insurers cover preventive services such as certain diabetes screenings without copays or deductibles, and seniors can now receive these screenings free of charge as well. Insurance companies can no longer deny individuals coverage because of a pre-existing condition, including a family history of diabetes, and children can now stay on a parent's health insurance plan until age 26. By supporting the Diabetes Prevention Program—the first preventive service model eligible for expansion under Medicare—the ACA has improved the quality of care, reduced health care costs, and helped prevent the onset of diabetes.

Nearly one in three American children is overweight or obese, causing a rise in the prevalence of type 2 diabetes among children. Unless we act, approximately one-third of all children born since the turn of the century will suffer from diabetes during their lifetimes. The First Lady's *Let's Move!* initiative has worked to reverse this childhood obesity trend and put children on a path to a healthy future during their earliest years by fostering environments that support healthy choices; promoting physical activity; providing healthier foods in our schools; and ensuring families have access to nutritious, affordable foods and the information they need to make healthy choices. We have also harnessed the American spirit of innovation through our Precision Medicine Initiative: By tailoring treatments to individuals based on personalized information such as genetics, we can move closer to curing diseases like diabetes and give more Americans the opportunity to live full, healthy lives.

Every year, too many Americans experience the consequences of diabetes—but in part because of the dedication of our Nation's health care providers, researchers, and advocates, we have made important strides in combating this disease, and we have reason to hope this progress will continue. This month, let us work to show every individual living with diabetes that they are not alone, and let us continue strengthening our investment in the fight against this disease.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2016 as National Diabetes Month. I call upon all Americans, school systems, government agencies, nonprofit organizations, health care providers, research institutions, and other interested groups to join in activities that raise diabetes awareness and help prevent, treat, and manage the disease.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of October, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–26658
Filed 11–1–16; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Notice of October 31, 2016

Continuation of the National Emergency With Respect to Sudan

On November 3, 1997, by Executive Order 13067, the President declared a national emergency with respect to Sudan and, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), took related steps to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the actions and policies of the Government of Sudan. On April 26, 2006, in Executive Order 13400, the President determined that the conflict in Sudan's Darfur region posed an unusual and extraordinary threat to the national security and foreign policy of the United States, expanded the scope of the national emergency to deal with that threat, and ordered the blocking of property of certain persons connected to the conflict. On October 13, 2006, the President issued Executive Order 13412 to take additional steps with respect to the national emergency and to implement the Darfur Peace and Accountability Act of 2006 (Public Law 109–344).

The actions and policies of the Government of Sudan continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13067 of November 3, 1997, expanded on April 26, 2006, and with respect to which additional steps were taken on October 13, 2006, must continue in effect beyond November 3, 2016. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Sudan declared in Executive Order 13067.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
October 31, 2016.

[FR Doc. 2016–26659
Filed 11–1–16; 11:15 am]
Billing code 3295–F7–P

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